TRANSCRIPT OF RECORD, ETC.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1879.

No. 242.

THE PACIFIC RAILROAD OF MISSOURI, APPELLANT,

vs.

GEORGE E. KETCHUM, CORNELIUS K. GARRISON, JAMES SELIGMAN, THOMAS W. PIERCE, THE ATLANTIC & PACIFIC RAILROAD COMPANY, HENRY F. VAIL AND JAMES D. FISH, TRUSTEES, JAMES BAKER, THE MISSOURI PACIFIC RAILWAY COMPANY, AND THE NATIONAL TRUST COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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SUPREME COURT OF THE UNITED STATES. No. 242.

THE PACIFIC RAILROAD OF MISSOURI, APPELLANT,

vs.

GEORGE E. KETCHUM, CORNELIUS K. GARRISON, JAMES SELIGMAN, Thomas W. Pierce, The Atlantic & Pacific Railroad Company, Henry F. Vail and James D. Fish, Trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri. Filed October 8, 1877.

1 THE UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *sct:*

Be it remembered that heretofore, to wit, on the 11th day of November, A. D. 1875, in the circuit court of the United States for the eastern district of Missouri, there appears of record the following entry, to wit:

In Equity.

GEORGE E KETCHUM, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants, } No. 703.

Now comes the complainant, by his solicitors, Messrs. Sharp & Broadhead, and files his bill of complaint herein against the said defendants; and, on motion of said solicitors, it is ordered that subpœnas in chancery be issued against the said defendants, returnable to rules the first Monday, the 3d day of January, 1876.

And the said bill of complaint so filed as aforesaid, is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri, in Equity.

To the honorable the Judges of the circuit court of the United States for the eastern district of Missouri, in the eight circuit sitting in equity:

Humbly complaining shows unto your honors, your orator, George E. Ketchum, a citizen of the State of New York, who brings this bill of complaint against the Pacific railroad, a corporation created under and by virtue of the laws of the State of Missouri, and against the Atlantic & Pacific Railroad Company, a corporation created and organized under and by virtue of an act of Congress of the United States, approved July 27, 1866, and at the several times hereinafter mentioned, engaged in operating and maintaining a railroad in the State of Missouri, aforesaid, and against James Baker, Rufus J. Lackland, and Dwight Durkee, citizens of the State of

Missouri; and Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, James Punnett, and Luther C. Clark, citizens of the State of New York.

And thereupon your orator complains and alleges that the said Atlantic & Pacific Railroad Company, was and is a corporation created in manner aforesaid, and by the aforesaid act of Congress authorized and empowered to sue and be sued, plead and be impleaded, defend and *and* be defended in all courts of law and equity within the United States.

Your orator further complains and alleges:

First. That the said Pacific Railroad, defendant herein, made and delivered to the defendants, Uriel A. Murdock, James Punnett, and Luther C. Clark, a mortgage, or deed of trust, dated July 15th, 1868, which said Pacific Railroad conveyed and mortgaged to said Murdock, Punnett, and Clark, all and singular of the entire line of the Pacific railroad, two hundred and eighty-three miles in length, extending from the depot at Fourteenth street, in the city of St. Louis, and passing through the counties of St. Louis, Franklin, Gasconade, Osage, Cole, Moniteau, Cooper, Pettis, Johnson,
2 Cass, and Jackson, in the State of Missouri, and ending at the western boundary of said State of Missouri, at Kansas City, with its appurtenances, including the depots, stations, machine shops, rolling-stock, machinery, rights, interests, and franchises of the said railroad, as trustees, and in trust to secure the payment of the series of seven thousand bonds mentioned in said mortgage, severally dated the first day of August, 1868, for the sum of one thousand dollars each, payable twenty years after date to bearer, in gold coin of the United States of America, at the bank of America, in the city of New York, and interest thereon at the rate of six per cent. per annum, payable semi-annually in gold coin upon the presentation of coupons thereunto annexed, and which said mortgage contained a clause to the effect that if the said Pacific railroad should fail to pay the interest on any of said bonds secured thereby, for ninety days after the same became due and payable, and demand therefor made, or if the principal sum of any of said bonds, when and as the same became due and payable, should not be paid for the period of ninety days after demand made therefor, said mortgagees or trustees were authorized and required, upon the written request of the holder of any bond, the principal or interest of which should be in arrear or unpaid, to sell the said railroad and property, interest, rights, and franchises thereby mortgaged, at public auction, at the court-house in the city of St. Louis, first giving ninety days' notice thereof, and of the time, place, and terms of sale, by notice specified in said mortgage, and on such sale to execute and deliver conveyances, to transfer and convey said property, and all the interest of said mortgagors therein, to the purchaser or the purchasers thereof, who were thereby authorized to enter upon and take possession of the same, and in such case said trustees were directed to

apply the proceeds of said sale pro rata among the holders of all bonds secured by said mortgage.

Your orator further shows unto your honors that the whole amount of seven million dollars of bonds, mentioned in and secured by said mortgage, were executed, issued, and negotiated by said company, and are now outstanding, and that the interest has been duly and regularly paid upon said bonds, and that no interest is due thereon, nor will any mature until February 1st, 1876; and that said mortgage is a first lien upon the property thereby mortgaged.

Second. Your orator further shows unto your honors that said Pacific Railroad made and delivered to the defendants, Edwin D. Morgan and Joseph Seligman, a mortgage, or deed of trust, dated July 1st, 1871, by which said Pacific Railroad conveyed and mortgaged to the said Morgan and Seligman, the same property mentioned and described in the preceding mortgage to Murdock, Punnett, and Clark, and subject to the lien of said last mentioned mortgage as trustees, and in trust to secure the payment of an issue of three thousand bonds mentioned in the said mortgage, severally dated July 1st, 1871, for the sum of one thousand dollars each, payable twenty years after date, in lawful money of the United States, to the holders of said bonds, at the National Bank of Commerce, in the city of New York, and interest thereon at the rate of seven per cent. per annum, payable semi-annually in like lawful money, on the presentation of coupons thereunto annexed; and which said mortgage contained a clause similar in all respects to that mentioned in the preceding mortgage, authorizing the trustees, upon the written request of the holders of any ten or more of the bonds secured thereby, in case of default for ninety days in the payment of the principal or interest after demand, or in case of failure to pay said trustees an annual sum of fifty thousand dollars,
3 thereby agreed to be paid to reduce said mortgage, to sell and convey the premises therein mentioned, for the benefit of all the bonds secured thereby, without preference or priority.

That the whole amount of said bonds, mentioned in said mortgage, was executed, issued, and negotiated by said company; and that under a clause in the said mortgage providing for a sinking fund, one hundred and ninety-six thousand of the bonds secured thereby have been redeemed and cancelled; and that the residue of the entire issue of said bonds secured by said mortgage, amounting to two million eight hundred and four thousand dollars, are now outstanding and unpaid; and that the interest has been duly and regularly paid upon all the bonds outstanding, and that no interest will mature thereon until January 1st 1876, and that said mortgage is a second lien upon the said property.

Third. That the said Pacific railroad made and delivered to the defendants, Rufus J. Lackland and Dwight Durkee, a mortgage or deed of trust, dated April 19th, 1872, by which said Pacific railroad conveyed and mortgaged to the said Lackland and Durkee certain

real estate in the city of St. Louis, State of Missouri, in said mortgage described as follows:

Four blocks of ground in the city of St. Louis, being city lots numbered four hundred and eighteen, four hundred and twenty-three, four hundred and twenty-eight, and four hundred and thirty-three, bounded east by Seventh street, south by Cerré street, west by Eleventh street, and north by Poplar street; also, block number two hundred and thirteen, in the city of St. Louis, bounded east by Twelfth street, south by Austin street, west by Fourteenth street, and north by Randolph street; saving and excepting therefrom lots 26, 29, 33, and 34, the north one-half of lot number 36, and part of lot number 25, embracing the southwest corner of said block, sixty-six feet eight inches on Fourteenth street by one hundred feet on Austin street.

Also, the following-described real estate in the city block number four hundred and thirty-eight, viz: Beginning at the northwest corner of Eleventh and Cerré streets, in the city of St. Louis, the southeast corner of said block, thence west along the north side of Cerré street, one hundred and fifty-two feet and six inches, more or less, to an alley; thence north one hundred feet; thence east parallel to Cerré street, one hundred and fifty-two feet six inches, to Eleventh street; thence southwardly, on the line of Eleventh street, to the place of beginning.

Also, the following, viz: Commencing on the southwest corner of city block number four hundred and thirty-eight, the northeast corner of Twelfth and Cerré streets; thence north one hundred and four feet and six inches; thence east one hundred and fifty two feet and six inches, to an alley; thence south one hundred and four feet six inches, to Cerré street; thence west one hundred and fifty-two feet six inches to Twelfth street, the place of beginning.

Also, the following described tract or parcel of land, viz: Commencing at the northwest corner of city block number four hundred and thirty-nine, the southwest corner of Twelfth and Cerré streets; thence south one hundred and twenty-six feet, more or less, to the south line of property of the Pacific railroad; thence eastwardly along said south line to the northeast corner of said block 439; thence along the south line of Cerré street, to the place of beginning; as trustees and in trust to secure the payment of an issue of bonds, amounting in the aggregate to eight hundred thousand dollars, each dated May 1st, 1872, payable twenty years after date,

4 in lawful money of the United States, to bearer, at the National Bank of Commerce, in the city of New York, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, in like lawful money, on the presentation of certain coupons annexed to said bonds; of which said bonds six hundred were for the sum of one thousand dollars each, and four hundred for the sum of five hundred dollars each; and which mortgage contained a clause similar to that contained in the preceding mortgage, authorizing the trustees, upon the written request of the holders of

any ten or more of the bonds secured thereby, in case of default of ninety days in the payment of the principal or interest, after demand, to sell and convey the premises therein mentioned, for the benefit of all the bonds secured thereby, without preference to priority; and that the whole amount of said bonds were executed, issued, and negotiated by said company, and are now outstanding, and that said mortgage is a first lien on the real estate therein mentioned.

Fourth. Your orator further shows unto your honors that subsequent to the execution and delivery of the aforementioned mortgage the said Pacific railroad constructed a branch railroad connecting with and intersecting its main line at or near Kirkwood, about thirteen miles west from the city of St. Louis, and extending from the point of such intersection to the Mississippi river at Carondelet, now known as South St. Louis, in the State of Missouri, aforesaid, and also constructed, in connection with said branch railroad, side tracks running to and connecting with furnaces built on the line of the railroad at Carondelet aforesaid; and also erected on said branch road depots, engine houses, and water stations, and also a depot at Carondelet, aforesaid; and also purchased and acquired the title to various parcels of real estate on the line of said branch railroad, at or near Carondelet, aforesaid, for the erection of depots, stations, machine shops, and other purposes connected with the operation of said branch railroad; and thereupon, said Pacific railroad made and delivered to the defendants, Jesse Seligman and James Baker, a mortgage or deed of trust, dated October 1st, 1873, by which said Pacific railroad conveyed and mortgaged to the said Seligman and Baker all and singular the branch railroad constructed and operated as aforesaid, and extending from a point on the main line of the railroad of the parties of the first part, at or near Kirkwood, thence to the termination of said railroad at the Mississippi river at Carondelet, or South St. Louis, as aforesaid, with its appurtenances, including the depots, stations, machine shops, superstructures, and erections on the line of said branch railroad, or at Carondelet aforesaid, together with all the said tracks and switches connected with said branch railroad, and also all the lands acquired and appropriated, or which may be acquired or appropriated for depots, engine houses, car houses, station houses, warehouses, machine shops, or other superstructures and erections on the line of said branch railroad, or at Carondelet, aforesaid, excluding, however, from the operation or lien of this mortgage the depot at Kirkwood, or any buildings erected, or which may be erected at Kirkwood, aforesaid, for or connected with the operations of the main line of said railroad, as aforesaid, as trustees, and in trust to secure the payment of an issue of five hundred bonds, each for the sum of one thousand dollars, dated October 1st, 1873, payable twenty years after date, to bearer, in gold coin of the United States, at the National Bank of Commerce, in the city of New York, and interest thereon at the rate of six per cent. per annum, in gold coin aforesafd, semi-annually on

thousand bonds, therein and herein termed "third mortgage bonds," of one thousand dollars each, dated July 10th, 1875, payable twenty years after date, to bearer, in lawful money of the United States, at the office of the Atlantic & Pacific Railroad Company in New York, with interest at seven per cent. per annum, from May 1st, 1875, in like lawful money, semi-annually, on the first of November and May in each year, on the presentation of coupons annexed to said bonds; and that the payment of the principal and interest of each of said bonds was guaranteed by the Atlantic & Pacific Railroad Company.

That said mortgage contained a clause to the effect that, if the said Pacific railroad should fail to pay the interest on any of said bonds thereby secured for six months after the same became due and payable, and demand made therefor, or if the principal sum of any said bonds, when payable, should not be paid for six months after demand, said trustees were authorized and required, on the written request of holders of bonds to the amount of five hundred thousand dollars, the principal or interest of which should then be in arrear or unpaid, to sell the said railroad and branch railroad, and all the property by said mortgage conveyed, at public auction, in the city of St. Louis, giving notice thereof as specified in said mortgage, and to execute and deliver conveyances to transfer and convey said property to the purchaser or purchasers, who might
7 immediately enter upon and take possession of the same, and to apply the net proceeds of said sale to the payment of all the bonds secured by said mortgage, and then unpaid, pro rata.

That said last mentioned mortgage, dated July 10th, 1875, recited the fact, and your orator, on information and belief, avers the fact to be, that said Pacific railroad had issued its bonds amounting in the aggregate to fifteen hundred thousand dollars, and designated as "income bonds," each of which bonds was dated September 2d, 1872; and of which one thousand were for one thousand dollars each, and eight hundred were for five hundred dollars each, and one thousand for one hundred dollars each, payable in lawful money of the United States on the first of September, 1892, with interest at seven per cent. per annum, in like lawful currency, on the first of March and September in each year; and that said company had also made a further issue of bonds amounting in the aggregate to the principal sum of two millions dollars, and designated as "improvement bonds," consisting of two thousand bonds of one thousand dollars each and dated December 15th, 1874, payable in lawful money of the United States on the first of November, 1889, with interest at seven per cent. per annum, in like lawful money, payable on the first of May and November in each year on the presentation of coupons annexed to said bonds.

That the interest and principal of said "income" and "improvement" bonds were chargeable against and payable out of the earnings of the said railroad prior to any dividend on its capital stock,

but were not secured by any mortgage or lien upon any of the property hereinbefore mentioned.

That said mortgage also recited and declared that a portion of said third mortgage bonds should be used in retiring and cancelling the issue of income bonds and improvement bonds last above mentioned, so far as the same could be done; and that the residue of said bonds should be issued by said company for the purpose of obtaining additional sums of money for the future permanent improvement of its road.

Your orator further shows unto your honors that the entire amount of third mortgage bonds secured by said mortgage were issued by said company, and that a sufficient number of said bonds to retire the "income" and "improvement" bonds were placed in the hands of the trustees in said third mortgage mentioned, to wit, said Vail & Fish, for the purpose of being exchanged for such "income" and "improvement" bonds; and, upon information and belief, your orator charges that about two million of dollars of said bonds have been exchanged for "income" and "improvement" bonds as above mentioned, and that, in addition, upwards of three hundred thousand dollars of said bonds have been negotiated by said company, and that all of said bonds secured by said third mortgage are now outstanding and unpaid, and that none of the interest which became due on said bonds, or any of them, on the first of November, 1875, has been paid, but that the whole amount thereof remains due and unpaid; and that your orator is the holder of many of said third mortgage bodds secured by the aforesaid third mortgage, and that the interest which became due on said bonds was duly demanded on the first day of November, 1875, according to the terms of said mortgage, and the coupons representing said interest were presented for payment at the place where the same, by the terms thereof, are payable on the first day of November, 1875, and payment demanded and refused.

Your orator further shows that each and every of the mortgages hereinbefore mentioned was duly recorded in the proper
8 offices, and that no proceedings at law have been had or taken on behalf of any holder of any of the bonds secured by any of the aforesaid mortgages for the recovery of the principal or interest of any of the said bonds herein mentioned or secured by said mortgage, nor any suit or action commenced in regard to or upon said mortgages, or either of them.

Sixth. Your orator further shows unto your honors that the Pacific railroad, defendant herein, is a corporation created by and under the laws of Missouri, and that on the 29th of June, 1872, the said Pacific railroad owned and operated a railroad extending from St. Louis aforesaid to Kansas City on the western boundary line of the State of Missouri, and which said road extended through Franklin, and also operated several lines of railway connected with its main line, and which had been theretofore leased to it by various railroad corporations owning such lines, and which last-mentioned

gage hereinbefore mentioned may be attached or levied upon under execution or other legal process.

That the interest upon the first and second mortgages mentioned herein has been regularly paid as the same became due, and that the premises covered by said mortgages are an abundant and ample security for the payment of the bonds secured by those two mortgages as they mature; and that the net earnings and income of the railroad therein mentioned have been, are, and will be, ample and sufficient to provide for, pay, and keep down the interest to become due under all the mortgages hereinbefore mentioned, which are prior liens to the third mortgage; but that the said mortgaged premises are an insufficient and inadequate security for the payment of the amount due and to become due under the mortgage last aforesaid, and that the rights and interests of all parties interested in the said last mentioned mortgage, and the rights and interests of creditors of said Pacific Railroad not secured by mortgage, require that a receiver should be appointed, as hereinafter prayed for.

Your orator further, on information and belief, alleges that default having been made, as hereinbefore stated, by the Atlantic & Pacific Railroad Company, in the payment of interest upon one of the mortgages executed and issued by that company to secure the payment of an issue of six million dollars of bonds, an action was instituted on behalf of the holders of such bonds to foreclose such mortgage, and for the appointment of a receiver of the property and effects of the said company, including the property issued to it by the Pacific Railroad, defendant herein, and that such action is still pending and undetermined.

Eighth. Your orator further shows unto your honors that an application has been made by your orator, on behalf of himself and other holders of bonds secured by said mortgage to the defendants, Henry F. Vail and James D. Fish, to take proceedings to foreclose the aforesaid mortgage, and to protect the interests of your orator and such other holders; but that no such proceedings have been taken; and, as your orator is informed and believes, some doubt is expressed whether, under such mortgage, they have the right to institute such proceedings or any proceedings thereunder, by reason of the non-payment of the interest due November 1st, 1875, and for such reason prefer not to take such proceedings; and your orator, being apprehensive that his interests and the interests of other holders of like bonds, may be seriously affected by delay in the institution of proceedings to foreclose said mortgage and to obtain possession of said property, has brought this action on his own behalf, and on behalf of all others similarly situated, and holding like bonds secured by said third mortgage, and has made said Vail and Fish parties defendant herein.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law,

and is only relievable in a court of equity, where matters of this kind are properly cognizable and relievable.

Your orator therefore prays that the said mortgage, dated July 10th, 1875, executed by said Pacific Railroad to the defendants, Vail and Fish, may be foreclosed, and that the premises and property covered thereby may be sold under a decree of this honorable court; that the premises and property covered thereby, which are by the terms thereof subject to the two mortgages, one dated July 15th, 1868, to the defendants, Murdock, Punnett, and Clark, and the other dated July 1st, 1871, to the defendants, Edwin D. Morgan and Joseph Seligman, may be sold separately, subject to the lien of said two mortgages; and that the real estate embraced in said mortgage of July 10th, 1875, which is thereby subject to the mortgage dated April 19th, 1872, to the defendants Lackland and Durkee, may be sold separately, subject to the lien of said last mentioned mortgage; and the branch railroad and other property embraced in said mortgage of July 10th, 1875, which by the terms thereof are subject to the mortgage dated October 1st, 1883, to the defendants
11 Jesse Seligman and James Baker, may be sold separately, subject to the lien of said last-mentioned mortgage; or, if the court should determine that all the property embraced in said mortgage of July 10th, 1875, should be sold in one parcel, subject to the liens of the mortgages thereon existing prior to said July 10th, 1875, the same may be so sold; and that if the court should determine that all the property covered by said several mortgages be sold, and the proceeds applied to the extinguishment of the several prior mortgages thereon, then that the net proceeds of the several parcels of property covered by said several prior mortgages (the liens of which said several prior mortgages upon the several parcels of property embraced therein and hereby recognized) may be applied to the payment of said mortgages respectively, and that subject to the payment of such prior liens, the net proceeds of the sale of the mortgaged premises under the mortgage of July 10th, 1875, may be applied to the payment of all bonds secured by said mortgage last mentioned, at that time outstanding and unpaid, and of the interest thereon, without discrimination or preference, and rateably; and that the said several defendants in this action, and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof.

Your orator further prays that, if necessary, an account may be taken of the bonds secured by the said mortgages, and of the amount due on said bonds for principal and interest, or either, and that a receiver be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts, and earnings, rights, privileges, franchises, and immunities of the said Pacific Railroad, including the lines of railway and other

property transferred to and possessed by the said Atlantic & Pacific Railroad Company, under the aforesaid lease from the Pacific Railroad (of Missouri), or operated by said Atlantic & Pacific Railroad Company, as hereinbefore stated, and all rolling stock and other property appurtenant to said lines of railway; and that a writ of injunction be issued out of and under the seal of this honorable court, or by one of your honors, according to the form of the statute in such case made and provided, enjoining and restraining the said defendants herein, and each and every of them, except the receiver appointed by this court, from interfering with, transferring, selling or disposing of any of the property aforesaid, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property aforesaid, or of which said receiver may be appointed; and that your orator may have such further or other relief in the premises as to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the defendants, the Pacific Railroad, the Atlantic & Pacific Railroad Company, James Baker, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, James Punnett, and Luther C. Clark, respectively, therein and thereby commanding them, on a day certain therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide by the said order,
12 direction and decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience.

And as to the said several parties who are properly defendants to this bill of complaint, and who may be out of the jurisdiction of this court, your orator prays that process may be issued to make them parties if they should come within such jurisdiction; or that, if they should not come within such jurisdiction, such proceedings may be had in regard to such defendants, by publication or otherwise, to conclude them in this behalf, as may be authorized by and be according to the statutes in such case made and provided.

And your orator, as in duty bound, will ever pray, &c.

GEORGE E. KETCHUM.

SHARP & BROADHEAD,
Of Counsel for Compl't.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

George E. Ketchum, being sworn, says that he is the plaintiff in the foregoing bill named, and has read the same, and knows the contents thereof, and that the matters and facts therein stated are true.

GEORGE E. KETCHUM.

Sworn and subscribed before me, by the said George E. Ketchum, on this 3d day of Nov., 1875.

[SEAL.] GEO. F. BETTS,
U. S. Commissioner, Southern District of New York.

And thereupon a subpœna in chancery was issued, which appears in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *sct:*

In the Circuit Court of the United States, in and for said district.

The President of the United States to the Pacific Railroad, the Atlantic and Pacific Railroad Company, Jamns Baker, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, James Punnett, and Luther C. Clark, greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri, on the first Monday of January next, at the city of St. Louis, then and there to answer the bill of complaint of George E. Ketchum, a citizen of the State of New York, filed against you on the 11th day of November, 1875. Hereof fail not.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, the 13th day of December, 1875. Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

M. M. PRICE, *Clerk,*
[SEAL.] By A. P. SELBY, *Deputy.*

MEM.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

M. M. PRICE, *Clerk.*
By A. P. SELBY, *Deputy.*

13 Upon which said subpœna in chancery the marshal made his return in words and figures as follows:

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

The within-named Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, James Punnett, and Luther C. Clark cannot be found within the eastern district of Missouri. I have served this subpœna on the within-named Atlantic and Pacific R. R. by leaving a copy with D. R. Garrison, vice-president of said road; on the Pacific Railroad by leaving a copy of this subpoena with James Baker, attorney for

said road, he being the only officer of said road that could be found and by leaving a copy of this subpœna with Rufus J. Lackland, James Baker, and one for Dwight Durkee with his wife, at his residence in the city of St. Louis, in the eastern dist. of Missouri, on the 13th day of December, A. D. 1875.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri.
By JAMES B. GEGGIE, *Deputy.*

And afterwards, on the 31st day of December, 1875, the following proceedings were had in said cause, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFC RAILROAD *et al.*, Defendants.

This day come defendants Rufus J. Lackland and Dwight Durkee, by A. M. Gardner, Esquire, their solicitor, and enter their appearance herein.

And afterwards, on the 8th day of January, 1876, the following proceedings were had in said cause, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

This day comes the complainant, by James O. Broadhead, Esquire, his solicitor, and shows to the court that Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, James Punnett, and Luther C. Clark, are not inhabitants of nor found within this district, and that they have not voluntarily entered their appearance herein; and on motion of said solicitor it is ordered that said absent defendants be, and they are hereby, directed to appear at the clerk's office of this court, on or before the first Monday of February next, and plead, answer, or demur to the complainant's bill herein.

It is further ordered that a certified copy of this order be served on said absent defendants in the manner required by the rules of this court for the service of other process.

And afterwards, to wit, on the 8th day of January, 1876, the following motion for leave to defend was filed in said cause by Thomas P. Akers, to wit:

14 In the United States Circuit Court for the Eastern District of Missouri. In Equity.

GEORGE E. KETCHUM, Plaintiff,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now comes Thomas P. Akers, and shows and says that he is a stockholder in the Pacific railroad, and owns one hundred shares of

the capital stock of said road; that he is informed and believes, and upon information and belief alleges the fact to be, that the above-entitled cause for the foreclosure of the third-mortgage bonds of the Pacific railroad was filed by the consent of the officers of said Pacific railroad; that the officers and a number of the directors, being themselves interested in the third-mortgage bonds of said railroad, and interested in obtaining possession of the said road under said bonds, do not intend to resist the foreclosure of said mortgage, or make any resistance or defense to said suits, as will appear from the sworn statements of the attorney, director, and said officer of said Pacific railroad, filed herewith in support of this motion.

Your petitioner further shows and says that, as a stockholder, he never gave his sanction or consent to the issuing of said third-mortgage bonds; that he is informed and believes, and upon information alleges the fact to be, that the pretended consent of some of the stockholders thereto was obtained by false and fraudulent pretenses by some of the officers and directors of the said Atlantic and Pacific Railroad Company, and Pacific Railroad Company.

That your petitioner is informed by counsel learned in the law, that their exists a good and valid defense against this suit of foreclosure; that unless he is permitted to make answer and defend against said bill, he will be greatly damaged in his interests as a stockholder in said road.

Wherefore your petitioner moves and prays for leave to be granted to him by this honorable court to come and defend in said above entitled cause.

THOMAS P. AKERS.

HILL & BOWMAN,
Solicitors for Petitioner.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Thomas P. Akers, deponent, being duly sworn, on oath says: That he has read the above and foregoing bill, and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters which are stated therein on information and belief, and as to those matters this deponent believes them to be true; and deponent further says, that unless the motion as prayed be granted and leave be given to defend as asked, his interests will be greatly endangered.

THOS. P. AKERS.

Subscribed and sworn to before me this 8th day of January, 1876.

C. M. WARD,
U. S. Commissioner, Eastern District of Missouri.

And afterward, on the 7th day of February, 1876, the following answer and cross-bill of Thomas P. Akers was filed by leave of court.

15 (Which is omitted for printed record, because the amended answer and cross-bill contains averments which is given page —— of this record.)

And afterwards, on the 7th day of February, 1876, the Pacific Railroad filed the following answer to the bill of complainant herein:

In the circuit court of the United States in the eastern district of Missouri. In equity.

GEORGE E. KETCHUM
vs.
THE PACIFIC RAILROAD, THE ATLANTIC & PACIFIC RAILROAD COMPANY, James Baker, Rufus J. Lackland, *et al.*

And now on this day comes the Pacific Railroad, and for a separate answer to the bill of complaint in this case says: True it is the said Pacific Railroad is a corporation, created under and by virtue of the laws of the State of Missouri, and that the said Atlantic & Pacific Railroad Company is a corporation created under and by virtue of the act of Congress, in said bill mentioned

It also states that it is true that it made and delivered to the defendants Uriel A. Murdock, James Punnett, and Luther C. Clark the mortgage or deed of trust mentioned in said bill, dated July 15th, 1868, to secure bonds as therein described, to the amount of seven million dollars, and that the said mortgage contained the provisions and conditions therein mentioned, and the interest on the bonds therein mentioned has been duly paid.

It also admits that it made and delivered, as in said bill stated, to Edwin D. Morgan and Joseph Seligman, the mortgage or deed of trust therein mentioned, to secure the bonds therein mentioned, and that said mortgage contained the provisions and conditions therein mentioned; that the whole amount were issued and sold, and that there are now outstanding the amount thereof, in said bill mentioned, and that the interest thereon has been duly paid.

It also admits that it is true that it made the mortgage therein mentioned to Rufus J. Lackland and Dwight Durkee, dated April 19th, 1872, to secure bonds amounting in the aggregate to eight hundred thousand dollars, dated May 1st, 1872, of the description in said bill mentioned, and that said mortgage contains the provisions and conditions therein mentioned.

It also admits that it constructed the railroad therein mentioned, together with the side tracks, depots, engine-houses, and all the other appurtenances, and purchased the real estate in said bill mentioned.

It also admits that it made and delivered to Jesse Seligman and James Baker the mortgage or deed of trust therein mentioned, dated October 1st, 1873, upon the property therein mentioned, to secure the bonds therein mentioned, and that said mortgage contained the provisions therein mentioned, and that said bonds are still outstanding, and the interest thereon has been duly paid.

This defendant also admits that it exeeeuted, made and delivered

to the defendants, Henry F. Vail and James D. Fish, the mortgage or deed of trust in said bill mentioned, dated July 10th, 1875, by which it mortgaged to them, for the trust therein mentioned, all the property and franchises therein described, to secure the
16 bonds in said bill mentioned, denominated third-mortgage bonds; and that said mortgage and bonds contained the provisions and conditions, and was issued for the purpose in said bill mentioned, and that a demand of the payment of the interest due thereon as alleged was duly made and the payment refused.

This defendant further admits that it was the owner and lessee of the several railroads mentioned in said bill, and that at the time therein mentioned it leased, transferred, and assigned all the railroads owned by it and leased to it to the said Atlantic & Pacific Railroad Company, in the manner mentioned in said bill, and that the said last-mentioned company took possession of the said several railroads at the time mentioned in said bill, and have continued to manage and operate the same since that time. They also admit that since the date of said lease the said Carondelet Branch Railroad has been constructed, and additional improvements and the purchase of additional rolling-stock have been from time to time made, since the date of said lease, as in said bill stated.

This defendant also states, that it is true the said Atlantic & Pacific Railroad Company, by the term of said lease, agreed to pay the interest on all the mortgage bonds theretofore issued, and to pay the dividends on the stock of the Pacific Railroad, as in said bill mentioned, and that default was made in the payment thereof, as therein stated.

It is also true, that in pursuance of said lease obligations in various forms for the payment of money were from time to time issued by the Atlantic & Pacific Railroad Company in the name of the defendant, and for the payment of which this defendant is liable, and that it is also liable to pay the principal and interest of said third-mortgage bonds to Vail and Fish.

It is also true, that the said Atlantic & Pacific Railroad Company has made default in the payment of interest upon its bonds, secured by mortgages on the property originally owned by it, before the making of said lease, and has become embarrassed by floating debts to a very large amount, and has been unable to pay the dividends aforesaid, and the interest due November 1st, 1875, on the third-mortgage bonds aforesaid.

It is also true, that the interest upon the first and second mortgage bonds herein mentioned has been regularly paid as the same became due, and that the premises conveyed by said mortgage is abundant security for the first two mortgages as they mature.

This defendant, further answering, says: that the execution and delivery of the said third-mortgage bonds, and the mortgage to secure the same, was done in good faith, and for legal and proper purposes, without any fraud or malfeasance on the part of the board of directors or the stockholders of said company in the issue thereof,

and constitute a legal and binding obligation on the part of this defendant to pay the same. But it says that it is informed that a portion of said stockholders claim that they are fraudulent and void, and that the directors of this defendant are guilty of fraud in issuing the same.

Therefore this defendant asks this honorable court to prevent any of the stockdolders aforesaid to become a party defendant to this suit, upon a proper showing, and make such defence in the premises as they may see proper.

In witness whereof the said Pacific Railroad Company has caused these presents to be signed by James Baker, its attorney, and
17 John L. Dearborn, its secretary, and its corporate seal to be hereto affixed this 7th day of February, 1876.

[SEAL.] JAMES BAKER.
Att'y for said Company.

J. L. DEARBORN, *Sec.*

On said 7th day of February, 1876, the following further proceedings were had in said court, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now comes defendants, Henry F. Vail and James D. Fish, by Noble & Orrick, their solicitors, and enter appearance herein. Also come defendants, James Baker, Jesse Seligman, Ed. Morgan, Joseph Seligman, Uriel A. Murdock, and Luther C. Clark, by James Baker and Noble & Orrick, their solicitors, and enter their appearance herein, and by leave of court take until next rule day to plead herein.

And afterwards, on the 16th day of February, 1876, C. K. Garrison and others filed their petition to be made parties complainants, which said petition is as follows, to wit:

In the circuit court of the United States for the eastern district of Missouri.

GEORGE E. KETCHUM, Complainant,
vs.
THE PACIFIC RAILROAD, THE ATLANTIC & PACIFIC RAILROAD COMPANY, JAMES BAKER, RUFUS J. LACKLAND, DWIGHT DURKEE, JESSE SELIGMAN, HENRY F. VAIL, JAMES D. FISH, EDWIN D. MORGAN, JOSEPH SELIGMAN, URIEL A. MURDOCK, JAMES PUNNETT, and LUTHER C. CLARK, Respondents.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri:

Your petitioners, Cornelius K. Garrison and James Seligman, citizens of the State of New York, and Thomas W. Pierce, a citizen

of the State of Massaschusetts, respectfully represent: that they are the holders and owners of the third-mortgage bonds referred to and described in the bill of complaint in the above-entitled cause, as follows, to wit, your petitioners, Cornelius K. Garrison, holds and owns fourteen hundred (1,400) of said bonds, as will appear by affidavit herewith filed; James Seligman holds and owns three hundred and forty-seven (347), and Thomas W. Pierce holds and owns fifty (50) of said bonds, all of which said bonds are dated July 10th, 1875, and secured by a mortgage or deed of trust made to Henry F. Vail and James D. Fish, trustees, dated July 10th, 1875, and particularly described in said bill of complaint.

And your petitioners, upon information and belief, state that the allegations of said bill of complaint, and the matters and facts in said bill contained and stated, are true.

18 And to the end that your petitioners may be protected in their interest in the said third mortgage and in their said bonds by them held and owned, as aforesaid, and secured by said mortgage, as aforesaid, they respectfully pray that they may be made parties to the proceedings in said cause, and that they may be joined with the said George E. Ketchum as parties complainant therein, and be permitted to prosecute said suit with the said Ketchum and other owners of the said third *third* mortgage bonds who may desire to join as complainants herein.

And your petitioners hereby join the said Ketchum in his prayer for the relief, by him, the said Ketchum, asked for in said bill of complaint, and for such other and further orders and decrees of this court as may, in view of the allegations of said bill of complaint, may seem meet and proper.

CLINE, JAMISON & DAY,
Att'ys for C. K. Garrison.
GROVER & ELLIS,
Att'ys for James Seligman and Thos. W. Pierce.

And afterwards, on the 24th day of February, 1876, the following further proceedings were had in said cause, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now comes Thomas P. Akers, by Messrs. Hill & Bowman, his solicitors, and by leave of court files a printed copy of his answer and cross-bill herein, subject, however, to have the same struck from the files on motion of adverse parties hereto, the original answer and cross-bill to remain on file.

Ordered that this cause be set down for hearing on Monday, March 20th next.

And afterwards, on the 10th day of March, 1876, the complainant filed the following motion, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for said district. In chancery.

GEORGE E. KETCHUM
vs.
THE PACIFIC RAILROAD *et al.*

To the judge of said circuit court:

Now, at this day comes the said George E. Ketchum, complainant in the foregoing bill, and moves the court for an order, that the answer and cross-bill of Thomas P. Akers be withdrawn from the files of this court.

1. Because said answer and cross-bill were filed without leave of the court.

2. Because the said Thomas P. Akers is not a party defendant in the above-entitled cause, nor authorized to appear in said cause as a party thereto.

JAS. O. BROADHEAD,
Sol. for Complainant.

19 And afterwards, on the 25th day of March, 1876, Peter Marie and others filed the following petition to be made parties defendant herein, leave of court being given therefor.

In the Circuit Court of the United States for the Eastern District of Missouri.

GEORGE E. KETCHUM, Complainant,
vs.
THE PACIFIC RAILROAD and others, Defendants.

Your petitioners, Peter Marie, Frank A. Otis, Robert L. Cutting, Jr., and James D. W. Cutting, who are citizens of the city and State of New York; George R. Fearing, of the city of Newport, and State of Rhode Island, respectfully represent that the said Peter Marie is the owner of one hundred shares of the capital stock of said railroad company; that the said Frank A. Otis is the owner of over one hundred shares of the capital stock of said company; that said George R. Fearing is the owner of over two hundred shares of said stock; and that Robert L. and James D. W. Cutting, composing the firm of R. L. Cutting, Jr., & Co., are the owners of over five hundred shares of said capital stock; that Thomas P. Akers, a stockholder of said company, has filed his answer and cross-bill to the bill of complaint filed by complainant in this case, and in said answer and cross-bill avers that he files the same not only for his own benefit as such stockholder, but for the benefit of all other holders or owners of the shares of said capital

stock who may come in and contribute to the cost and expense necessary to the prosecution of the same.

Your petitioners respectfully pray that they may be allowed to come in and defend the said suit and be made co-defendants herein with the said Thomas P. Akers, and be joined with him as parties defendant herein, with such other stockholders as may desire to join them as such defendants.

The said petitioners further pray that they may be allowed to adopt the said answer and cross-bill as their answer and cross-bill in this cause, and to join with him in his prayer for relief in the premises.

R. L. CUTTING, JR., & CO.
FRANK A. OTIS.
GEORGE R. FEARING.
PETER MARIE.

And afterwards, on the 3d day of April, 1876, the following further proceedings were had in said cause, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now come James Seligman and Thomas W. Pierce, by Messrs. Grover & Ellis, their solicitors, on whose motion it is ordered that said Seligman and Pierce have leave to join as complainants with George E. Ketchum herein.

And again, on said 3d day of April, the following further proceedings were had in said cause, to wit:

20 *Appointment of Receiver.*

GEORGE E. KETCHUM, Plaintiff,
vs.
THE PACIFIC RAILROAD, THE ATLANTIC & PACIFIC RAILROAD COMPANY, James Baker, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, and Luther C. Clark, Defendants.

This cause having this day come on for hearing on the application and motion of the complainant for the appointment of a receiver or receivers of the property, effects, rights, and franchises mentioned in said bill of complaint herein:

And the same having been duly heard by solicitors James O. Broadhead, Esq., of counsel for complainant, and James Baker, Esq., of counsel for the Pacific railroad, the Atlantic & Pacific Railroad Company, and for himself, and A. M. Gardner, Esq., of counsel for Rufus J. Lackland and Dwight Durkee; and Messrs. Noble & Orrick, of counsel for Henry F. Vail and James D. Fish; Thomas J. Portis, Esq., of counsel for Jesse Seligman, E. D. Morgan, and

Joseph Seligman, and appearing and assenting to this order, and the court being sufficiently advised in the premises:

It is ordered, adjudged, and decreed that Oliver Garrison, John H. Beach, and Joseph L. Stephens, of the State of Missouri, be, and they are hereby, appointed receivers in this case, with full power to enter and take possession of the railroad of said "Pacific railroad" (corporation,) in the State of Missouri and elsewhere, and all its branches and leased lines, together with all side-tracks, switches, station-houses, and all other houses, rights of way, and grounds in use, or necessary or convenient to be used in operating said roads; also all machine-shops, machinery, workshops, tools, and implements belonging to said company; and all engines, cars, and rolling-stock of every kind owned and belonging to said company, or leased by it, and all supplies, fuel, iron, and material owned and belonging to said company, and all money, credits, choses in action, and all other claims and demands of whatever nature to which it is entitled, and all other property, real and personal, of whatever nature and description, and wherever situated, belonging to said company, and the same to hold and use under this or such further orders as may from time to time hereafter be made by this court; and that until otherwise ordered the said receiver shall operate all of said roads and branches throughout the whole extent thereof, according to the usual course of business thereof, and to the best advantage for the interest of all parties concerned, and generally to maintain said roads, their rolling-stock, fixtures, and appurtenances in good order and in an efficient and safe condition; and for that purpose to purchase, for cash or on credit, or partly for both, material and supplies whenever necessary. And as the court finds that the lease of the Pacific railroad to the Atlantic & Pacific Railroad Company, entered into on the 29th day of June, 1872, did, by the provisions of said deed of lease, add by the action of the respective companies, parties thereto, terminate on the 7th day of March, 1876; and that since that time the earnings and receipts from said respective roads properly and rightfully inured to the benefit of the company owning the same:

It is ordered that all moneys now due for or on account of
21 the business transacted by or over the said Pacific railroads, and the leased lines and branches pertaining thereto, be paid to and received by the receivers herein appointed, and that they have full power to collect and receipt for the same; and that the books and accounts in the hands of the said receivers of said Atlantic & Pacific railroad, heretofore appointed, as aforesaid, by this court, of all the business and other transactions in respect to the operation and management of the said Pacific railroad, its leased lines and branches, be subject at all times to the inspection and free use of the receivers hereby appointed, and their agents and servants; and that they be permitted to take copies of all such parts thereof as they may deem proper.

And it is further ordered that the receivers hereby appointed

shall, out of the earnings of the railroads under their charge, or out of any other money that may come into their hands as such receivers, pay, at maturity, such parts of any certificates of indebtedness as may have heretofore been issued by the receivers of said Atlantic & Pacific railroad, under the orders of this court, to pay any indebtedness on account of said Pacific railroad, including the interest of its bonded indebtedness, or for the purchase of supplies that have been used on the same; and that they may have power to purchase and in like manner pay for any or all the supplies, material, and fuel on the lines of the roads under their control heretofore purchased by said Atlantic & Pacific Railroad Company, which are liens thereon, or which have been purchased by the receivers of said Atlantic & Pacific railroad, and justly chargeable to said Pacific railroad and its branches and leased lines.

It is further ordered that Henry F. Vail and James D. Fish, the trustees created by and mentioned in said third mortgage on said Pacific railroad, be, and they are hereby, authorized to exchange such of the bonds secured by said mortgage as may now be in their hands for that purpose for such of the income and improvement bonds as have not yet been exchanged for as provided in said mortgage deed; and that, in case of their failure or refusal so to do, the receivers hereby appointed have full power and authority to make such exchange, reserving all rights and questions concerning the validity of said bonds and mortgage.

It is further ordered that said receivers be, and they are hereby, authorized and empowered out of the property and earnings of the said Pacific railroad to redeem any and all other bonds or stocks belonging to the said Pacific railroad, which have heretofore been pledged or hypothecated to secure any of its indebtedness, which, in their judgment and discretion, will be beneficial to the estate in their charge to pay.

And the said receivers are hereby authorized and empowered to employ and pay all such agents, servants, laborers, clerks, and assistants, as in their direction may be necessary under them to cary this order into effect with economy and prudence, and to make, enter into, and perform all necessary contracts for the purchase of supplies; and for the prosecution of said business they are hereby further ordered and required to keep and cause to be kept, in regular and systematic order, strict and regular accounts of all the business of said trust in their hands, and of the daily receipts and disbursements of money, so as to keep distinct and separate the receipts and disbursements of the roads aforesaid, earned and expended by and on the Pacific railroad, and the lines heretofore leased to that company, and so as to show the earnings and expenditures by and on account of each leased line and branch road on the part of said road lying in the State of Kansas, and elsewhere
22 out of the State of Missouri, and showing the mode of division of through business passing from and over two or more of said lines, and showing the items in detail.

The said receivers are hereby required to file in the office of the clerk of the court, within the first twenty days of each month, a detailed account of all their receipts and expenditures for the preceding month; and they shall also file a detailed statement of all materials purchased, and the price paid or to be paid for the same.

The receivers shall also pay in like manner, out of the property and earnings of each road, all sums which are now or may hereafter become due for taxes upon any of the property of such road coming to their hands as receivers; and also all interest or principal due or to become due upon any purchase of property which comes to their hands as receivers, and which, in the judgment of the said receivers, it will be beneficial to the estate in their possession to pay.

They are hereby further authorized and empowered to appropriate and apply the property, money, and effects aforesaid, vested in them as aforesaid, with the current earnings of the said roads and business, so far as the same may be necessary to the objects and purposes of this trust, under the direction of this court, for the use and benefit of such parties as may be found entitled thereto; and if, after making all payments hereinbefore authorized, there shall remain in the hands of said receivers, at any time, any surplus moneys, they shall report the same to this court as to the disposition of the same.

And the said receivers are further directed to proceed with all practicable dispatch, after they enter upon the discharge of their duties, to take an inventory of all and singular the property and effects of every description of the respective roads, which may come to their possession or under their control, in virtue of this order, noting the present condition, and to file such inventory in this court.

And the receivers are further empowered in their discretion to remove any of the officers or employees of said railroad company, other than the president and directors thereof, and such other officers as pertain to and *and* are necessary to maintain the corporate organization; but notwithstanding this reservation, the entire management of said road, and the power to appoint and remove all superintendents, engineers, and other agents and employees, in any way concerned in operating the said road, shall belong to the receivers. The receivers, acting in pursuance of this, or any order or decree of this court herein, in good faith, shall not be individually liable for any breach of any contract entered into by them as such receivers, or for the fulfillment of any obligation entered into by them as such receivers, or for any injury to the person or property of the parties, or of third persons, or for the faults or negligence of their subordinates; but the property, moneys, and effects that shall, at any time, be in their hands as such receivers, shall be bound for all such breaches or wrong, and may, from time to time, as may be necessary, be applied in such manner as this court shall direct.

It is further ordered that each of said receivers, before entering on their duties as aforesaid, shall, within ten days from the date of this order, enter into a bond, with two or more securities, to the acceptance of this court, or one of the judges thereof, in the penal sum of five hundred thousand (500,000) dollars, conditioned for the faithful performance of all duties enjoined upon them.

And it is further ordered that each of said receivers shall
23 without delay take an oath before a judge or a clerk of this court, faithfully to perform his duties as receiver in this cause.

It is further ordered that the said receivers be authorized to institute and prosecute and defend any and all suits which, in their judgment, may be necessary to protect the property and interests intrusted to their charge, and to defend all suits which may be brought against them as receivers, or against the Pacific Railroad, and to execute all bonds or obligations which it may be necessary or proper to be executed in the prosecution or defense of such suits, and to do and perform all matters and things necessary in the prosecution or defense of such suits.

It is further ordered that said receivers be authorized to pay all indebtedness of said Pacific Rrailroad heretofore contracted for supplies, material, and fuel used on said Pacific Railroad, its leased lines and branches, which are a lien thereon, and which they may deem just and proper; and if at any time there is not sufficient money in their hands, arising from the earnings of said railroad and other sources, that they have authority and power to borrow the same, not exceeding $300,000, and issue their certificates therefor, payable at such times as they may deem proper, not to exceed six months from the date thereof, to bear interest at a rate not exceeding eight per cent. per annum, which, if not paid out of said receipts prior to any foreclosure of the mortgage sued on in this case, shall be paid out of the proceeds of the sale of the property so mortgaged when made.

It is further ordered that the receivers hereby appointed shall pay all debts and obligations of every nature and kind heretofore contracted by the said receivers of the Atlantic & Pacific Railroad since their appointment, for and on account of the said Pacific Railroad, and that none of the equities of any of the parties in interest shall be affected thereby, but the determination of the same is hereby reserved for the future action of this court; and that, for the purpose of enabling this court to properly settle their respective equitable rights, the matter is referred to S. D. Thompson, a master in chancery, to take an account between said Atlantic & Pacific Railroad Company and said Pacific Railroad.

It is further ordered that said receivers have power and authority to pay to the county of St. Louis, and are hereby directed to pay the solicitor of said county, the amount of interest now due to said county, to wit, $41,000, including March, 1876, for and on account of the interest now due on the indebtedness to said county for

$700,000 of its bonds loaned by it to said railroad company. But such payment shall not in anywise be construed into recognition or admission of any right of lien in behalf of said county on the income or property of said railroad company.

It is further ordered that the receivers hereby appointed shall keep a record of their proceedings and of all orders made by them, that in case of the absence of one of their number a majority may act, but any one who may dissent may have his objection noted on the record, and may by petition refer the matter to the court for its opinion and order thereon. Such dissent, when entered of record, shall have the effect of relieving the receiver so dissenting, and his securities, from all liability on account of such order or act.

It is further ordered that the cross-bill of Thomas P. Akers heretofore filed be taken from the files of the court, as the same is found to be in defective form.

It is further ordered that leave be given to Thomas P. Akers as a stockholder, and the county of St. Louis, claiming to be a
24 stockholder or trustee for stockholders, to file an amended cross-bill herein within thirty days, upon giving security for costs in the sum of $5,000.

It is further ordered that leave be granted to the county of St. Louis to make answer to the bill of foreclosure in this cause and defend against the same.

It is further ordered that each of the receivers aforesaid be paid for his services as such receiver at the rate of five thousand dollars per year, and all necessary expenses incurred by him while away from his home in the discharge of his duties as such receiver.

It is further ordered that all the receivers give immediate attention to the settlement and payment of all just and proper taxes assessed upon the said road and its properties.

And afterwards, on said 3d day of April, 1876, the following further proceedings were had in said cause, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now comes C. K. Garrison, by Messrs. Cline, Jamison & Day, his solicitors, on whose motion leave is granted said C. K. Garrison to join with complainant in the prosecution of this cause.

Also come Henry F. Vail and James D. Fish, by Messrs Noble & Orrick, their solicitors, on whose motion leave is granted said Vail and Fish until the first Monday in June, 1876, to plead, answer, or demur, or take further action in this case.

And afterwards, to wit, on the 25th day of April, 1876, the said Thomas P. Akers, by leave of court, files amended answer and cross-bill herein, and which is in words and figures as follows, to wit:

Answer and cross-bill.

Circuit court of the United States, eastern district of Missouri. In equity.

GEORGE E. KETCHUM
vs.
PACIFIC RAILROAD *et al.*

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri, in the eighth circuit, sitting in equity:

By leave first had and obtained, now comes Thomas P. Akers and the county of St. Louis, and presents this amended answer and cross-bill in the above-entitled cause, and humbly complaining showeth unto your honors:

1st. That said county of St. Louis is a municipal corporation and political subdivision of the State of Missouri, and as such is capable of suing and being sued, pleading and being impleaded.

2d. And your orators show that said county of St. Louis, under and by virtue of the provisions of an act entitled "An act to authorize the formation of railroad associations, and to regulate the same," duly passed by the legislature of the State of Missouri, and approved February 14, 1853, did on the 13th day of May,
25 1854, subscribe to the capital stock of said Pacific Railroad $1,200,000, and thereafterwards did make full payment for the same; that by the provisions of said act of February 14th, 1853, it was provided that upon the making of such subscription to any railroad company by any county or city, as in said act provided for and contemplated, then "such county or city shall thereupon become like other subscribers to such stock;" that the said county of St. Louis, acting under the provisions of said act, did, on Saturday, May 13th, 1854, adopt the following order, viz:

Ordered, that whereas this court has been satisfied, by the recent election held in St. Louis county, that it is the sense of the taxpayers thereof that this court shall subscribe to the capital stock of the Pacific railroad (the same being that which commences in the city of St. Louis and runs westward by way of Jefferson City, and thence along the best and most practicable route through the county of Johnson, and terminating at any point in Jackson county, as mentioned in the eleventh section of an act of the General Assembly of Missouri, entitled "An act to accept a grant of lands, made to the State of Missouri by the Congress of the United States, to aid in the construction of certain railroads in this State, and to apply a portion thereof to the Pacific railroad," approved December 25, 1852,) one million two hundred thousand dollars, this court does now hereby subscribe one million two hundred thousand dollars to the capital stock of said Pacific railroad. And it is further ordered that David Thomas, Esq., presiding justice of this court,

be, and he is hereby, appointed, authorized, and instructed to subscribe the said sum of one million two hundred thousand dollars to the capital stock aforesaid, in such manner as shall be required by the charter and by-laws of said Pacific railroad, and to execute and deliver, in that behalf, any instrument or instruments of writing that may be necessary and sufficient, as aforesaid, to show that the said subscription of one million two hundred thousand dollars to the capital stock of said Pacific railroad has been made by this court. It is further ordered that said *said* subscription, made or to be made as aforesaid, is in virtue of the powers granted in, and the limitations and restrictions imposed by, an act of the General Assembly of the State of Missouri, entitled "An act to authorize the formation of railroad associations and to regulate the same," approved February 24th, 1853.

That afterwards, on June 5th, 1854, the county court of St. Louis county entered the following order in the premises:

"David Thomas, Esq., the presiding justice of this court, having, under the order of this court of the 13th day of May last, subscribed on the books of the Pacific Railroad Company the sum of twelve hundred thousand dollars, the court now approve said subscription and the term thereof, and order that a copy thereof be spread upon the record of the court, as follows, to wit:

"STATE OF MISSOURI,
"*City and County of St. Louis.*

"MAY 31, 1854.

"In conformity with an order of the county court of St. Louis county, made and of record of the 13th day of May, 1854, the undersigned, duly authorized under the order aforesaid, doth hereby subscribe for and in behalf of the said county of St. Louis, in virtue of the power granted, and the limitation and restriction im-
26 posed by, the act of the General Assembly of the State of Missouri, entitled 'An act to authorize the formation of railroad associations and to regulate the same,' approved February 24, 1853, twelve thousand shares of one hundred dollars each to the stock of the Pacific railroad, amounting to the sum of twelve hundred thousand dollars, and agreed to pay the same in four annual instalments, said instalments to be raised by a levy of a special tax. The first instalment of three hundred thousand dollars to be paid on or before the 15th day of December, 1854; the second instalment of three hundred thousand dollars on or before the 15th day of December, 1855; the third instalment of three hundred thousand dollars on or before the 15th day of December, 1856, and the fourth and last instalment of the same amount on or before the 15th day of December, 1857."

And then afterwards, on the 20th of October, 1854, the following order was made by said court, viz:

It is ordered, that for the purpose of paying the instalment of three hundred thousand dollars due on the 15th day of December, 1854, of the twelve hundred thousand dollars subscribed by the court to the capital stock of the Pacific railroad on the 31st day of May, 1854, a special tax of seven-tenths of one per cent. be levied and collected upon all property and taxables within the city and county of St. Louis, made taxable by law for State and county purposes, for the year eighteen hundred and fifty-four.

And thereafterwards, on the 13th of November, the said court adopted, upon the application of the Pacific Railroad Company, the following order, viz:

Upon the application of the Pacific Railroad Company it is ordered by the court that, for the purpose of paying the instalment of three hundred thousand dollars, made payable on the 15th day of December, 1855, of twelve hundred thousand dollars subscribed by the court to the capital stock of said railroad on the 31st day of May, 1854, and in anticipation of the collection of the railroad tax for that year, bonds of the county of St. Louis, in sums of one thousand dollars, and to the amount of two hundred and twenty-five thousand dollars, issuse to said railroad company, said bonds to be signed by the presiding justice of this court, attested by the clerk under the seal of the court, to be dated the 15th instant, and made payable on the 1st day of January, 1856, with interest at seven per cent. per annum from the 1st day of January, 1855, for which interest coupons signed by the clerk shall be affixed, payable one on the 1st of July, 1855, and one at maturity of the bond; the principal and interest of said bonds to be made payable at the Phœnix Bank, New York, the said railroad company agreeing to pay all interest on said bonds, and the court reserving the right to apply a sufficiency of the tax aforesaid, to be levied and collected for the year 1855, to the redemption and payment of said bonds.

And thereafterwards, on the 19th of December, 1854, it was, by the county court of St. Louis county, ordered that a warrant issued upon the treasurer in favor of the Pacific Railroad Company for one hundred and fifty thousand dollars, being on account of the $300,000 made payable on the 15th inst., according to the subscription made by the county to the capital stock of said company.

And thereafterwards, on the 8th of February, 1855, it was, by the county court of said St. Louis county, ordered that a warrant issue upon the treasurer in favor of the Pacific Railroad Company
for one hundred thousand dollars, being a payment on the
27 $300,000 due by the county on the 15th day of December,
1854, according to the terms of the subscription by the county to the capital stock of said company.

That afterwards, on the 8th day of March, 1855, the following proceedings were had and orders made by said county court of St. Louis county, viz.:

Upon the application of the Pacific Railroad Company, and it appearing that there is due from the county of St. Louis to the

said company the sum of fifty thousand dollars, being the balance of the three hundred thousand dollars made payable on the 15th day of December last, according to the subscription made by the county to the capital stock of said company on the 31st day of May, 1854, it is ordered by the court that fifty bonds of the county, in sums of one thousand dollars each, to be dated April 1st, 1855, payable seven months after date, with interest at the rate of six per cent. per annum, in gold or silver, at the office of the county treasurer, in the city of St. Louis, to the president of the Pacific Railroad Company, or bearer, to be signed by the presiding justice of this court, countersigned by the clerk, with the seal of the court affixed, te be issued and delivered to said company in payment of said fifty thousand dollars.

And thereafterwards, on the 25th of April, 1855, the following proceedings were had and orders made by said county court of St. Louis county, viz.:

Upon the application of the Pacific Railroad Company, it is ordered by the court that for the purpose of paying the instalment of three hundred thousand dollars, made payable on the 15th day of December, 1856, of the twelve hundred thousand dollars subscribed by the court to the capital stock of said railroad on the 31st day of May, 1854, and in anticipation of the collection of the railroad tax for that year, bonds of the county of St. Louis, in sums of one thousand dollars, and to the amount of one hundred and eighty thousand dollars, issue to said company, and in order to pay the instalment af three hundred thousand dollars of the said subscription made payable on the 15th day of December, 1857, and in anticipation of the collection of tax for that year, bonds of the county of St. Louis, in sums of one thousand dollars, and to the amount of one hundred and seventy thousand dollars, issue to said company, said bonds to be signed by the presiding justice of this court, attested by the clerk under the seal of the court, all to be dated May 1st, 1855, with coupons attached for the payment of the interest, at seven per cent. per annum, semi-annually; such coupons to be signed by the clerk of this court, principal and interest of said bonds to be made payable at the Phœnix Bank of New York; said one hundred and eighty thousand dollars to be made payable on the first day of January, 1857, and said one hundred and seventy thousand dollars to be made payable on the first day of January, 1858; the said railroad company agreeing to pay all interest on said bonds, and the court reserving the right to apply a sufficiency of the tax to be collected for the year 1856 and 1857 to the payment of said bonds, and all interest not punctually paid by said company, said interest to run from July 1st, 1855.

And thereafterwards, on the 28th of August, 1855, the following proceedings were had, and order made by said county court of St. Louis county, viz.:

Upon the application of the Pacific Railroad Company, it is ordered by the court that for the purpose of paying a balance of

three hundred thousand dollars, made payable on the 15th day of December, 1856, of the twelve hundred thousand dollars subscribed by the court to the capital stock of said railroad on the 15th day of May, 1854, and in anticipation of the collection of the railroad tax for that year, bonds of the county of St. Louis, in sums of one thousand dollars, and to the amount of one hundred and twenty thousand dollars, issue to said company, and in order to pay the balance of said instalment of three hundred thousand dollars of said subscription made payable on the 15th day of December, 1857, and in anticipation of the collection of the tax for that year, bonds of the county of said Louis, in sums of one thousand dollars, and to the amount of one hundred and thirty thousand dollars, issue to said company, said bonds to be signed by the presiding justice of this court, attested by the clerk under the seal of the court, all to be dated September 1st, 1855, with coupons attached for the payment of the interest at the rate of seven per cent. per annum, semi-annually, such coupons to be signed by the clerk of this court, principal and interest of said bonds to be made payable at the Phœnix Bank, New York; said one hundred and twenty thousand dollars to be made payable on he first day of January, 1857, and said one hundred and thirty thousand dollars to be made payable on the first day of January, 1858; the said railroad company agreeing to pay all interest accruing on said bonds, and the court reserving the right to apply the railroad tax collected for said years to the payment of said bonds; said interest to run from October 1st, 1855, and the first coupon on each bond to run three months.

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That thereafterwards, on the 7th day of January, 1856, the county court of St. Louis county made its order directing a warrant to issue upon the treasurer of said county to the Pacific Railway Company for seventy-five thousand dollars, being the balance due said company on the instalment due on the 15th day of December last, according to the terms of the subscription made by the county to the capital stock of said company. That each and all of the foregoing orders so made as aforesaid were duly executed, and full payment made as aforesaid for said $1,200,000 stock of the Pacific railroad, so subscribed for as aforesaid by the county of St. Louis. That pursuant to the provisions of said act of February 14th 1853, the county of St. Louis levied a special tax for the larger portion of the stock subscription so made, and special tax receipts were issued to such of the taxpayers of the county of St. Louis as paid such tax. That by virtue of the provisions of said act the holders of said tax receipts became entitled to receive from the county of St. Louis an amount of stock of said Pacific railroad equal in amount to the tax receipts so held by such taxpayers. That there has been delivered to the taxpayers of St. Louis county, under the provisions of said act, $982,000 of said stock. That there remains $218,000 of said original stock, the rightful property of the county of St. Louis, to be held in trust and

faithfully cared for by the said county until the same shall be demanded by any taxpayers entitled thereto.

That among the privileges as originally given to said county was the privilege of voting all stocks so subscribed and paid for until the same should be issued to such taxpayers as were entitled thereto. But in violation of the said contract, the Legislature of the State of Missouri, on the 14th of March, 1869, enacted the following provisions:

"The board of county commissioners (since changed to the county court for St. Louis county) shall meet on the days respectively fixed for the election of directors of the Pacific, Iron Mountain and North Missouri railroads, and cast the vote of the county for suitable persons as directors of said several companies;
29 but in counting said vote, the said board shall not take into account, and shall not assume to represent the shares of stock of the Pacific railroad which the county court of St. Louis county, in behalf of said county aforesaid, in the year 1854, for which the taxpayers of St. Louis county have paid by a direct tax, and for which such taxpayers are entitled to certificates on presentment of their railroad tax receipts. Nor shall said board of county commissioners assume to represent the stock to be paid by a special tax subscribed to the Iron Mountain and North Missouri railroad companies after said subscription has been paid by a levy of the special tax, and the taxpayers are entitled to certificates."

And your orators aver that by means of the above illegal act (the same being in violation of contract previously entered into by the county of St. Louis and Pacific Railroad Company), the county of St. Louis has been prevented from voting or representing, as by its contract it was entitled to do, and has never by its vote sanctioned any of the illegal or fraudulent acts hereinafter stated and complained of, and has never received any of the dividends under the said pretended lease of June 29th, 1872, hereinafter referred to.

3d. And, at all times, saving and reserving unto themselves all benefits and advantages of exception which can or may be had or taken for answer thereto, or unto so much or such parts thereof as they are advised are material or necessary for them to make answer unto, answering saith: That they admit the allegation of complainant's said bill as the first mortgage of $7,000,000, secured by deed of trust, dated July 15th, 1868, as also the allegations of complainant's said bill as to the second mortgage of $3,000,000, secured by deed of trust, dated July 1st, 1871. These defendants further say that, as to the real estate mortgage of $800,000, secured, as is alleged in said bill of complaint, by deed of trust, dated April 19th, 1872, they have no knowledge or information sufficient to enable them to form a belief, and are not sufficiently advised to either deny or admit, but ask that the court will require from complainant strict proof of the allegations in complainant's bill concerning the same. And as to the said mortgage of $500,000 upon the Carondelet branch, so-called, secured, as is alleged by complainant, by mort-

gage or deed of trust, dated October 1st, 1873, they have no knowledge or information sufficient to enable them to form a belief, and are not sufficiently advised to either deny or admit, but ask that the court will require from complainant strict proof of the allegations of complainant's bill concerning the same.

That as to the said alleged mortgage to Henry F. Vail and James D. Fish, dated July 10th, 1875, by which it was attempted to convey all the property, real and personal, rights, interests, and franchises of the said Pacific railroad, described in each of the four mortgages before mentioned, for the securing of $4,000,000 so-called third mortgage bonds, defendants say, that they as stockholders never consented thereto, and are informed and believe, and have reason to believe, and upon information and belief charges the fact to be, that said alleged mortgage was fraudulently executed, and a pretended consent of a portion of the stockholders, the execution of the same was obtained through false and fraudulent pretences and representations, in this, to wit: That it was, as they are informed and believe, falsely stated and represented to the directors and stockholders of the said Pacific railroad, by the directors of the Atlantic & Pacific Railroad Company, then in charge, as lessees, of the Pacific railroad, that a large amount of permanent improvements had been made on said Pacific railroad—large and permanent improvements as to road-beds and bridges, by said lessees—and by reason of which the Pacific railroad had become largely indebted therefor, and that such false representations were so made by verbal statements of the directors and officers of said Atlantic & Pacific Railroad Company, and also by means of printed circulars, caused to be issued by the said directors and officers, and circulated among said stockholders; that said representations so made were, as he is informed and believes, false and fraudulent in this, to wit: That no improvements had been made on said road by the Atlantic & Pacific Railroad Company of any kind, except such as were required by the terms and provisions of said lease of June 29th, 1872, to be made at the cost and expense of the said last mentioned company, lessees; in that no improvements had been made except such as were necessary to keep said road in as good condition as when received; and the false representations so made as aforesaid, were made for the purpose of securing the assent of the directors and stockholders of the Pacific railroad to said mortgage. That said mortgage was made, and so fraudulently executed in fraud of the rights of the bona fide unsecured creditors and all stockholders of said railroad; that the directors of said Atlantic & Pacific Railroad Company, for the purpose of obtaining by foreclosure of said mortgage a title to said road, caused false and fraudulent representations to be so made. That the complainant in said bill, as defendant is informed and believes, and has reason to believe, and upon information and belief alleges the fact to be, received all bonds now held by him with full information of the fraudulent issue of the same, and of the facts as hereinbefore stated and hereinafter

set forth, and that said $4,000,000 bonds have been distributed, and at the time of the institution of this suit were held by said complainant, Ketchum, and the directors of said Atlantic & Pacific Railroad Company, for said company, and for themselves, and by their associates, with full knowledge of the facts above stated and hereinafter recited.

And that the said C. K. Garrison, who has joined in the prosecution of said suit of foreclosure since the institution of the same, and who by himself and associates now holds, owns, and controls the greater portion of said third mortgage bonds, purchased the same at a nominal price, to wit, from twenty-eight to fifty cents on the dollar; purchased and now holds the same, with full knowledge of the facts hereinbefore and hereafter stated, and all parties now holding any of said third mortgage bonds, and who are seeking with complainant a foreclosure of same, hold the same with like knowledge and information, and have obtained the same speculatively for the purpose and intent of procuring possession of the Pacific Railroad freed from the rights of your orators and the stockholders and unsecured creditors. That prior to the time when said third mortgage was so executed, to wit, on the 29th June, 1872, the said Pacific Railroad executed a pretended lease to the said Atlantic & Pacific Railroad Company, upon certain terms and conditions in said lease mentioned, of the entire line of railroad then owned and operated by it, as will more fully appear by copy of said pretended lease filed herewith for the information of this honorable court, and made part of this answer. That under said pretended lease the said Atlantic & Pacific Railroad Company, on said 29th day of June, 1872, obtained possession of said Pacific Railroad and its appurtenances, and continued in full possession of same until about November 4th, 1875, and until receivers thereof were appointed by this honorable court. That under the terms of said lease, if the same were of binding force and effect, the Atlantic & Pacific Rail-
31 road Company agreed and covenanted to pay all debts contracted for the keeping of said Pacific railroad in good and sufficient repair as a first-class railroad; that all of said indebtedness of said Pacific Railroad as the same existed on July 10th, 1875, in excess of the indebtedness existing June 29th, 1872, was in fact the indebtedness of said Atlantic & Pacific Railroad Company, not only by reason of said lease, if valid, but by reason of the same having been contracted by said last mentioned company while in possession of said road under said pretended lease, and receiving its income, which was more than sufficient to pay all running expenses of the same, all interest on its mortgage debt, all taxes, and all indebtedness for improvements thereon contracted for by said Atlantic & Pacific Railroad Company. That by reason of the foregoing facts the said mortgage or deed of trust of July 10th, 1875, was null and void and of no force and effect, and so known to be by said complainant and the parties receiving and now holding said third mortgage bonds; that said parties paid but a nominal price for said

bonds, knowing at the time of receiving same that they had been fraudulently issued in manner as aforesaid.

Defendants, further answering, state that the premises known as the Pacific railroad are now earning, and for the last six years have earned annually, from $3,200,000 per annum to $3,700,000, which, after paying the taxes and operating expenses, have been amply sufficient to pay all interest upon all legitimate debts of the railroad company, and a fair dividend to the stockholders. That the net earnings of said Pacific Railroad Company, according to the printed reports made by the defendants, the Atlantic & Pacific Railroad Company, and by Andrew Pierce and the other defendants, directors in said Atantic & Pacific Railroad Company, are about thirty-eight per cent. of the gross earnings, or say from $1,216,000 to $1,406,000 per annum.

That the amount received by said Atlantic & Pacific Railroad Company, from and on account of the Pacific railroad, from July 1st, 1872, to September 30, 1875, exceeded in amount $15,291,648. That at the time when said Atlantic & Pacific Railroad took possession of the Pacific railroad, on June 29th, 1872, there was cash and other available assets on hand, mainly in bills receivable, nearly or quite sufficient to pay all the floating indebtedness of said Pacific railroad. That if there was any deficiency it did not exceed more than about $250,000. That the bonded indebtedness of said road then existing amounted to only about $10,800,000, bearing interest at an average rate of less than seven per cent., excepting the debt due on account of $700,000 bonds of the county of St. Louis, which the road was bound and obliged to pay, together with interest at the rate of seven per cent. per annum.

That by the terms of said lease the said defendant, the Atlantic & Pacific Railroad Company, had no authority or right to encumber the *the* leased property, except for the purpose of paying the debts of said Pacific Railroad Company.

That the earnings and income of the Pacific Railroad Company, while in the possession of said Atlantic & Pacific Railroad Company, have been quite sufficient, and the petitioner avers, if properly administered, more than enough to pay the just and proper operating expenses, all accruing interest on the bonded debt due from said Pacific Railroad Company.

Defendants aver, upon information and belief, for that they have good reason to believe, and so believe, that the proceeds of the $800,000 real estate bonds, issued as above described, on the 19th of July, 1872, and the $500,000 Carondelet Branch bonds, issued as above described, October 1st, 1873, were sufficient[ly] ample
32 with which to pay for all permanent improvements made by said Atlantic & Pacific Railroad Company upon the premises claimed.

Defendants therefore aver, upon information and belief, and charges the facts to be, that the issue of said $1,500,000 income bonds, September 1st, 1872, and the issue of said $2,000,000 of im-

provement bonds December 15th, 1874, by the defendants, were fraudulent and unauthorized, and not required by any legitimate and proper wants of the said Pacific Railroad Company, and the said issues of bonds were not for the use and benefit of said Pacific railroad; that whatever benefit was derived from said issues of bonds inured to the said Atlantic & Pacific Railroad Company.

And defendants aver, upon information and belief, and charges the facts so to be, that said income and said improvement bonds were wrongfully issued by and at the request of said Atlantic & Pacific Railroad Company and its directors, and the defendants above named, directors of said Pacific railroad, in collusion with others to your petitioner unknown, for the purpose and with the intent of encumbering, conveying, and misappropriating the property of said Pacific Railroad Company, to the great injury of your petitioner and other stockholders of said company.

And complainant further says, that he is informed and believes, and upon information and belief alleges the fact to be, that the earnings of said Pacific railroad since June 29, 1872, have been sufficient in amount to pay all operating expenses and interest on its bonded debt then existing, and to pay in full its floating debt.

Your orator further states, that the construction of said Carondelet Branch, as he is informed and believes and charges, cost but $382,457.36; that on the 15th of October, 1873, a mortgage of $500,000 was issued, as aforesaid, and secured on said branch; that in addition thereto there was a real estate mortgage issued as aforesaid, on the 19th of July, 1872, securing $800,000 real estate bonds, and that it is, as your orator is informed and believes, claimed by the directors of the Atlantic & Pacific Railroad Company that the proceeds of a large portion of same were also used in the construction of said Carondelet Branch; but your orator says that he is informed and believes, and has reason to believe, and upon information and belief alleges the fact to be, that no proper accounting has ever been made as to how said $800,000 of "real estate bonds" were used, or for what purpose the proceeds thereof were applied. And your orator further shows, that he is informed and believes, and has reason to believe, and upon information and belief alleges the fact to be, that the said $1,500,000 "income bonds," issued as aforesaid, on the 1st of September, 1872, as also the $2,000,000 improvement bonds, issued as aforesaid on the 15th of December, 1874, were issued and caused to be issued and delivered by the board of directors of the Atlantic & Pacific Railroad Company, not for the purpose or use of the Pacific railroad, or for the payment of its debts, or of any debts contracted on its behalf or for its benefit—as the income of said road was amply sufficient therefor—but that the same were fraudulently issued and hypothecated for the purpose of paying and securing the debts of the said Atlantic & Pacific Railroad Company and the individual debts of the board of directors of said company, to wit, Andrew Pierce, William H. Coffin, and others of the board of directors of said

company, and that no part of said bonds were used for the benefit of said Pacific railroad or for the payment of its debts, but the same were issued and used in manner as aforesaid in fraud of the rights of your orator and all other stockholders of the Pacific rail-
33 road. That the said "income bonds" so issued on September 1st, 1872, were chargeable against the income of said road, and bear interest at seven per cent. per annum, and are numbered from one to one thousand, both inclusive, of the denomination of $1,000 each, and eight hundred of said bonds numbered from 1001 to 1800, both inclusive, being of a denomination of $500 each; and one thousand of said bonds numbered from 1801 to 2800, both inclusive, are of the denomination of $100 each. That said improvement bonds so issued as aforesaid on December 15, 1874, and due November 1, 1889, bear interest at seven per cent. per annum, payable semi-annually, and are all of the denomination of $1,000 each, and guaranteed by the Atlantic & Pacific Railroad Company.

And your orator further shows and says that he is informed and believes, and has reason to believe, and upon information and belief alleges the fact to be, that said Andrew Pierce, Clinton B. Fisk, and others of the directors of the Atlantic & Pacific Railroad Company, constituting a majority of said board of directors, fraudulently combined and confederated together, aided by a majority of the members of the Pacific Railroad Company, for the purpose of encumbering and misappropriating the property of the said Pacific railroad, and obtaining possession thereof freed from any claim of title thereto or interest therein of the stockholders of said road, and of the unsecured creditors thereof. That in furtherance of said fraudulent purpose a majority of the directors of said Atlantic & Pacific Railroad Company conspired with James H. Baker, Daniel R. Garrison, and James J. Taussig and others, constituting a majority of the directors of said Pacific railroad, and that in pursuance of such fraudulent purpose, and for the carrying out the object and purpose of said conspiracy, the said income and improvement bonds were issued in fraud of the rights of your orator and all other bona fide stockholders in said Pacific railroad. That said "income" and "improvement bonds" were fraudulently distributed among the directors of said Atlantic & Pacific Railroad Company and said Pacific railroad and their associates, who received the same at nominal prices, and all parties now holding any portion of the same received said bonds with full notice of the facts above recited and hereinafter stated, as also of the fact that there was no authority given under said pretended lease for issuing said bonds, a copy of which is recorded in each county through which the said Pacific railroad runs.

That the holders of said bonds, issued under and purporting to be secured by said mortgage to said Vail and Fish, trustees, dated July 10th, 1875, took them with full knowledge of all the matters and things alleged in this petition, and have bought and received them as a tainted, doubtful and illegal security, at a low price, in

some instances merely nominal. The petitioner avers this to be specially true of C. K. Garrison, one of the defendants herein named, who, after attending a meeting of the stockholders of the Pacific Railroad Company, held in the city of New York, on the 28th and 29th of December, 1875, at which meetings the frauds of some of the other defendants herein, and the want of equity attainting said third-mortgage bonds, were discussed and expressed, went from said meeting and thereafter purchased from various creditors of the Atlantic & Pacific Railroad Company said third-mortgage bonds to a very large nominal amount, the petitioner avers upon information and belief, to the par amount of $1,500,000, at the nominal rate of 50 per cent., or thereabouts.

That a pretended consent of stockholders of said Pacific
34 railroad to the issuing of said third-mortgage bonds was obtained, as defendants are informed and believe, and has reason to believe, and upon information and belief alleges the fact to be, by false statements and fraudulent representations made by the board of directors of the Atlantic & Pacific Railroad Company for whose benefit mainly the said pretended third mortgage was made and executed; that said false and fraudulent statements and representations were made by means of circulars distributed among the stockholders of said Pacific railroad, by the instigation and procurement of the directors of the Atlantic & Pacific Railroad Company. That by said false and fraudulent circulars, and the false statements therein contained, the stockholders of said Pacific railroad were led and induced to believe that such permanent improvements and extensions had been made to said Pacific railroad, and that such bona fide indebtedness had been contracted therefor, as to make necessary and expedient the issuing of said four millions of bonds, and the execution of said third mortgage for the securing thereof. All which representations so made were, as your orator is informed and believes, false and fraudulent; and had not such false representations been so made as aforesaid by the directors of said Atlantic & Pacific Railroad Company, such pretended consent could not have been obtained from the then stockholders of the Pacific railroad, for your orator is informed and believes, and has reason to believe, and upon information and belief charges the fact to be, that the directors of said Atlantic & Pacific Railroad Company caused to be printed and issued among the stockholders of said Pacific railroad fraudulent circulars, with blank power of attorney attached thereto, for the purpose of obtaining authority and ratification by the stockholders by the issuing of said third mortgage.

That in said circular false and fraudulent statement of facts were made as to pretended permanent improvements of said Pacific railroad, as to the building of new bridges by the lessee, which, in fact, had not been built, and as to the existence of a large pretended floating indebtedness of the Pacific railroad, which did not in fact exist.

That by means of these and other false statements in said circu-

lars contained, so fraudulently made as aforesaid, the signatures of a large number of stockholders were obtained to the proxies or powers of attorney attached to the said circulars. That such proxy and power of attorney was so attached to said fraudulent circulars that the same could be detached and removed therefrom without defacement; that such separation was made, and fraudulently caused to be made, by the directors of said Atlantic & Pacific Railroad Company, who thereby attempted to secure, by the fraudulent means in manner as aforesaid, the proxies and powers of attorney of the stockholders of said Pacific railroad for the ratification of said third mortgage. That, in fact, the pretended ratification of the stockholders was not otherwise secured than through and by means of such pretended proxies and powers of attorney thus obtained as aforesaid; that the powers of attorney proxies and so obtained only authorized the issuing of bonds to pay bona fide indebtness of said Pacific railroad.

That the representations contained in said circular are false and fraudulent in this, that it implies that floating liabilities had been created on account of the Pacific Railroad Company by the Atlantic & Pacific Railroad Company, in permanently improving the Pacific railroad in a manner and form and to an extent not required to be done at the proper charge and expense of the Atlantic and Pacific Railroad Company, by said pretended lease, under which
35 the Atlantic & Pacific Railroad Company were in possession of the premises known as the Pacific railroad. Your petitioner avers upon information and belief, and so charges the fact to be, that no such liabilities rightfully existed as against the Pacific railroad.

That said circular, so issued as aforesaid, was issued as aforesaid by the president of the Pacific Railroad, at the instigation and procurement of the directors of the Atlantic & Pacific Railroad, pursuant to the conspiracy so entered into as asoresaid. That at the time of issuing the same, the said President of the Pacific Railroad Company was really acting for and in the pay of the Atlantic & Pacific Railroad Company, and was auditor of said last named company. That these defendants had no knowledge of issuing said circular at the time, and had no knowledge of the execution of said third mortgage until a few days prior to the institution of this suit. A copy of said circular is, for the information of this honorable court, attached hereto and marked Exhibit B.

Defendants, further answering, show that the stockholders of the Pacific Railroad would, as they are informed and believe, and upon information and belief allege the fact to be, never would have consented to or sanctioned said third mortgage and the issuing of said third mortgage bonds, had the facts been truthfully stated and made known to them, and that only through fraud and misrepresentation as to the necessity for same was such pretended consent obtained. The defendant admits that the said third mortgage bonds so issued in July, 1875, were antedated as of May 1st, 1875, and the interest

made payable thereon on the first of November and May in each year; and the defendants say that they are informed and believe, and have reason to believe, and upon information and belief alleges the fact to be, that the said bonds were so antedated for the purpose of having the interest thereon become due and payable at an early day in furtherance of the fraudulent purpose aforesaid, and enable said parties to the better carrying into effect their fraudulent scheme of making and causing to be made a foreclosure and sale of the said Pacific Railroad; wherefore defendant says that the complainant having a full knowledge of all the facts in the premises, comes not into court with clean hands, and is not entitled in equity to any aid or relief from this honorable court.

Defendants further answering say that as they are informed and belive, and have reason to believe, and upon information and belief, charge the fact to be, that said complainant, Ketchum, fraudulently conspired, confederated, and combined with Andrew Pierce, of Boston, Joseph Seligman, Clinton B. Fisk, directors of the Atlantic & Pacific Railroad Company, and with James Baker, director and attorney for the Pacific Railroad, as also attorney for the Atlantic & Pacific Railroad Company, for the foreclosure by consent of said third mortgage, in fraud of the rights of all unsecured creditors and stockholders of said Pacific Railroad, and a majority of the directors of both of said companies consenting, did file, cause, and permitted to be filed, in the name of said Ketchum, at the request and procurement of said parties, and in furtherance of the fraudulent conspiracy and combination so formed and entered into for the defrauding of the stockholders and *bona fide* creditors of said Pacific Railroad, the said bill of foreclosure; that the same was by the said parties caused to be prepared before the said first coupons upon said third mortgage bonds so antedated as aforesaid fell due. That the stockholders of the Pacific Railroad held a meeting in the city of New York, on the 3d day of November, three days after said
36 suit had been commenced, which meeting was addressed by said Andrew Pierce and Clinton B. Fisk, and at which said Wm. H. Coffin was present. That at said meeting the fact that said suit had been commenced, or contemplated, was carefully withheld and concealed from the stockholders by said Pierce and Fisk, and in no part of the remarks made by either of them to said meeting was any allusion made to the commencement, or threatened commencement, of said foreclosure suit.

That the affidavit of the complainant to the printed bill filed in this court, was made on the 3d day of November last, and soon thereafter the same was filed in this honorable court, at the procurement of the majority of the directors of the Atlantic & Pacific Railroad Company, and the majority of the directors of the Pacific Railroad, the attorney and law officers of both companies consenting thereto; all of which is against equity and good conscience.

And defendant, further answering, shows and says that he is informed and believes, and has reason to believe, and upon informa-

tion and belief charges the fact to be, that the said fifteen hundred thousand dollars of so-called "income bonds" issued September 2, 1872, and mentioned in said alleged mortgage, were fraudulently issued by the procurement of the directors of the Atlantic & Pacific Railroad Company while in possession of the Pacific Railroad, and in control of all its affairs under said pretended lease; that said "income bonds" were fraudulently issued on the pretence of paying a fictitious indebtedness of the said Pacific Railroad for permanent improvements of the tracks, road-bed and bridges of the same; that as defendant is informed and believes, no such improvements had been made, and such pretended indebtedness did not exist. That the said two million of so-called "improvement bonds," issued on the 15th day of December, A. D. 1874, were in like manner fraudulently issued for pretended permanent improvements which were never, in fact, made on said Pacific Railroad.

That as respondent is informed and believes, and has reason to believe, and upon information and belief alleges the fact to be, the said Pacific Railroad was, on the 29th of June, 1872, when the same was taken into possession by the Atlantic & Pacific Railroad Company, in good repair and condition as a first class railroad; its bridges mostly new, and its road-bed, ties, and rails in good condition, and the floating debt of said corporation amounted to no more than about $263,000; that the income of said road was amply sufficient, if properly applied, to pay all operating expenses of said road, and to pay the interest on its bonded debt and all taxes and to pay in full the small floating debt then existing. But defendant answering, shows and says that he is informed and believes, and has reason to believe, and upon information and belief alleges the fact to be, that Andrew Peirce, Jos. Seligman, Clinton B. Fisk, Wm. H. Coffin, and others, composing a majority of the directors of the Atlantic & Pacific Railroad Company, fraudulent conspiring, combining, and confederating with James Baker and others, constituting a majority of the directors of the said Pacific Railroad, to defraud the stockholders and unsecured creditors of said Pacific Railroad, particularly the county of St. Louis, creditor to the extent of $700,000, did misappropriate the funds of the said Pacific Railroad Company, and fraudulently conspiring, combining, and confederating to obtain the control and ownership of the said Pacific Railroad, freed from all claims of the stockholders and bona fide creditors, fraudulently issued, and caused to be issued, the said "income bonds" and "improvement bonds," and at nominal prices distributed said bonds among themselves and their associates,
37 and for the purpose of and in furtherance of the said conspiracy and combination so formed and entered into to defraud the stockholders and unsecured creditors in manner as aforesaid, issued and caused, and procured by the means and in the manner as aforesaid, the said "third mortgage bonds" to be issued and provided for the exchange of said "income bonds" and "im-

provement bonds," with the intent and for the purposes as aforesaid.

And defendants further answering deny that the Pacific Railroad is unable, if properly managed, to pay its valid and legal obligations in full, as they become due, and denies that any commercial paper legally and properly made and executed by said Pacific Railroad has been protested, for the reason that no such commercial paper has, since June 1st, 1872, been properly and legally made by said company. But defendants admit that the Atlantic & Pacific Railroad Company is without sufficient means to pay and discharge its valid obligations in full as they become due, as complainant hath alleged. And respondent further says that said Atlantic & Pacific Railroad Company are bankrupt and insolvent, and are wholly unable to pay any unsecured claims against them. That their mortgage creditors are pressing their mortgage claims to foreclosure and seeking for a sale of all the premises known as the Atlantic & Pacific Railroad, as will more fully appear by reference to the suit of Littlefield *vs.* The Atlantic & Pacific Railroad Company and others, now pending in this court, and to the complaint and pleadings in which suit your petitioner begs leave to refer, as need may occur in the progress of this suit.

And defendants, further answering, admit that the interest upon the first and second mortgages upon the Pacific Railroad has been regularly paid as the same became due, and that the premises covered by said mortgages are ample security for the payment of the bonds secured by these two mortgages. And respondent admits that a receiver should be appointed, as prayed for by complainant, but not for the reasons and causes by him alleged, but for the protection of the stockholders and unsecured creditors of said road, whose interests are endangered in the premises as against the fraudulent conspiracy and combination of the directors, as hereinbefore stated. All which matters and things defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; wherefore defendants say that by reason of the matters and things herein set forth and shown to this honorable court no foreclosure should be granted or sale made under said third mortgage, but that said mortgage should be declared to be, by reason of the matters herein stated, null and void, and of no binding force or effect in law or equity; and defendants pray for such further and other relief as to the court shall seem meet, and as to equity and good conscience appertains.

FRANK J. BOWMAN,
Solicitor for Thos. P. Akers and the County of St. Louis.

BRITTON A. HILL,
Of Counsel.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Herman Rechtien, being duly sworn on oath, says: That he is,

and since December third, A. D. 1874, has been county treasurer of the county of St. Louis; that, as such officer, he has special charge of the financial affairs and moneys of said county, and, as an officer of said county, has given special attention to the matter
38 of its claim against the Pacific Railroad; that he has carefully read the above and foregoing answer; that of and concerning the matters stated therein he has made special inquiry, and the same are true according to his best knowledge, information, and belief.

M. RECHTIEN,
Co. Treasurer, St. Louis Co., Mo.

Subscribed and sworn to before me, this 25th day of April, 1876.
C. M. WARD,
U. S. Commissioner, Eastern District of Missouri.

Adjourned term, June, 1876.

And afterwards, to wit, on the 5th day of June, A. D. 1876, the following answers were filed in said cause, to wit:

In the circuit court of the United States for the eastern district of Missouri.

GEORGE E. KETCHUM
vs.
THE PACIFIC RAILROAD, THE ATLANTIC AND PACIFIC RAILROAD Company, James Baker, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, and Luther C. Clark.

Answer of Rufus J. Lackland and Dwight Durkee to the bill of complaint herein:

And now, on this day come the defendants, Rufus J. Lackland and Dwight Durkee, by A. M. Gardner, their solicitor, and for a separate answer to the bill of complaint in this clause say, that true it is that the said Pacific Railroad executed the mortgage or deed of trust, and the several series of bonds mentioned and set forth in said bill of complaint, and that the said Rufus J. Lackland and Dwight Durkee were made trustees in and by the said mortgage executed to them on the 19th of April, 1872, to secure eight hundred thousand dollars in bonds of the same date, and of the char'ter and description mentioned in said bill of complaint, and now are such trustees. And they further say that they know of no reason why the prayer of complainant's bill should not be granted.

A. M. GARDNER,
Solicitor for Defendants, Lackland and Durkee.

And also, on the said 5th day of June, A. D. 1876, the following answer was filed in said cause, to wit:

GEO. E. KETCHUM, with whom are joined C. K. GARRISON and others, Complainants,

vs.

PACIFIC RAILROAD and others, Defendants.

Now comes the Atlantic & Pacific Railroad Company, defendant in the above entitled cause, and files this its answer under its
39 seal, to the bill of complaint in the above-entitled cause, and says that the allegations and averments in said bill are true. This defendant says that it is true that it is a corporation created in the manner and with the powers mentioned in said bill; that it is also true that the Pacific Railroad is a corporation with the powers mentioned in said bill, and that said last-named corporation executed the several mortgages; and conveyances, mortgages, and deeds of trust in said bill of complaint mentioned, were duly executed and delivered as therein stated. It is also true, as this defendant is advised and believes, that all of said mortgages and deeds of trust were executed in good faith, and for the sole purpose of properly securing the just debts of said Pacific Railroad. This defendant further says that it *it* is also true, at the time and in the manner alleged, the said Pacific Railroad did make the said lease of date of June 29th, 1872, to this defendant, the terms of which lease are correctly stated in substance in said bill; and it is also true that this defendant is in default in compliance with the provisions of the said lease required of it as stated in said bill. It is also true that there is a large sum of money due for taxes remaining unpaid, for which both this defendant and the Pacific Railroad were at the date of the institution of this suit. It is also true that this defendant and the Pacific Railroad are both without sufficient means to pay or discharge their several valid obligations, and that the commercial paper of each of said corporations has been protested for non-payment. This defendant knows of no reason why the plaintiffs in the above-entitled suit should not have their lien and rights as set out in said bill enforced. And this defendant prays the court to protect all its rights and interests in the premises.

ATLANTIC & PACIFIC RAILROAD CO.,
[SEAL.] By SAMUEL HAYS.,
Vice-President.

J. N. LITTON,
Of Counsel and Solicitor for the Atlantic & Pacific Railroad Co.

And also, on said 5th day of June, A. D. 1876, the following other answer was filed in said cause, to wit:

GEORGE E. KETCHUM

vs.

THE PACIFIC RAILROAD, THE ATLANTIC AND PACIFIC RAILROAD COMPANY, James Baker, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Henry F. Vail, James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, and Luther C. Clark.

Answer of Uriel A. Murdock, Luther C. Clark. Edwin D. Morgan, Joseph Seligman, James Baker, and Jesse Seligman, to the bill of complaint herein:

And now on this day came the defendants, Uriel A. Murdock, Luther C. Clark, Edwin D. Morgan, Joseph Seligman, James Baker, and Jesse Seligman, by James Baker, their solicitor, and for answer to the bill of complaint in this cause say, that true it is that the said Pacific Railroad executed the several mortgages or deeds of trust, and the several series of bonds mentioned and set forth in said bill of complaiint, and that the said Murdock and Clark were made trustees in and by the said mortgage executed to them on the 15th day of July, 1868, to secure seven millions of dollars in bonds of the same date, and of the character and description mentioned in said bill of complaint, and now are such trustees, and that the said Morgan and Joseph Seligman were made trustees in and by the said mortgage executed to them on the first day of July, 1871, to secure the payment of three millions of dollars in bonds of the same date, which are of the description mentioned in said bill, and now are such trustees. It is also true that the said Baker and Jesse Seligman were made trustees in and by said mortgage executed to them on the first day of October, 1873, to secure the payment of a series of bonds of the same date, amounting in the aggregate to five hundred thousand dollars.

It is also true that the interest on all the aforesaid bonds have been regularly and promptly paid at maturity, according to the tenor and effect of said bonds.

These defendants ask that the interest and rights of the holders of said bonds, and that the rights and powers of these defendants may be fully protected by this honorable court.

JAMES BAKER,
Solicitor for said defendants.

And afterwards, to wit, on the 6th day of June, A. D. 1876, the following answer was filed in said cause, to wit:

GEORGE E. KETCHUM *et al.*
vs.
THE PACIFIC RAILROAD *et al.*

The defendants Henry F. Vail and James D. Fish, by Noble & Orrick, their attorneys, answering the bill of complaint of the said George E. Ketchum, say:

1st. That it is true, as alleged in said bill of complaint, that they are trustees in the deed of trust therein described, dated July 10th, 1875, made by the said Pacific Railroad to these defendants, as trustees.

2d. These defendants admit the allegations of said bill of complaint are true, as they are informed and believe.

And these defendants, as trustees of the several and varied interests of the bondholders secured by said deed of trust, submit the

same to the judgment of this honorable court, that the same may be duly provided for and protected, and ask that they may have such relief, including an allowance for their costs and expenses herein, as to your honorable court may seem meet.

NOBLE & ORRICK,
Attorneys for Vail and Fish, defendants.

Answer under oath is hereby waived.

CLINE, JAMISON & DAY,
And JAMES O. BROADHEAD,
Attorneys for complainants.

And afterwards, on the 6th day of July, 1876, the following further proceedings were had in said cause, to wit:

GEORGE E. KETCHUM *et al.*, Complainants,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now comes Thomas P. Akers and the County of St. Louis,
41 by Frank J. Bowman, Esq., their solicitor, and, by leave of court, dismiss the cross-bill filed herein, and withdrew the answer of said St. Louis County thereto, without prejudice to the lien claim of said county in this behalf.

Adjourned term.

And on the said 6th day of June, 1876, the following further proceedings were had in said cause, to wit:

In Chancery.

Decree of Foreclosure and Sale.

GEORGE E. KETCHUM *et al.*, Complainants,
vs.
THE PACIFIC RAILROAD, THE ATLANTIC & PACIFIC RAILROAD COMPANY *et al.*, Defendants. } No. 703.

And now at this day come the said complainant, by James O. Broadhead, his solicitor, and Cornelius K. Garrison, who, by the order of this court, has been made a co-complainant herein by his solicitors, Cline, Jamison & Day, and also James Seligman and Thomas W. Pierce, who have also, by order of this court, been made co-complainants herein, by their solicitors, Grover & Ellis; and also the defendants, The Atlantic & Pacific Railroad Company, by its solicitor, Joseph N. Litton, and the Pacific Railroad, by James Baker, its solicitor; and the said Rufus J. Lackland and Dwight Durkee, appearing by their solicitor, A. M. Gardner, and the said Jesse Seligman, Edwin D. Morgan, Uriel A. Murdock, Joseph Seligman, Luther C. Clark, appearing by their solicitor, James Baker, and the said Henry F. Vail and James D. Fish, appearing by their solicitors, Noble and Orrick; and the said James

Baker appearing in his own proper person; and it having been suggested to the court that James Punnett has departed this life since the institution of this suit, it is ordered by the court that this suit abate as to him.

And therefore, the said cause coming on to be heard upon the bill of said complainant and the answers of said defendants, and the exhibits and proofs in the cause, the county of St. Louis and Thomas P. Akers appear by their solicitor, Frank J. Bowman, and dismiss their answers and cross-bills, and Frank J. Bowman, as solicitor for the county of Louis, withdraws the separate answer of the county contesting the validity of said bonds; and it appearing to the court that the Pacific Railroad did, on the 10th day of July, A. D. 1875, make and deliver to the said Henry F. Vail and James D. Fish its mortgage or deed of trust, of that date, by which the said Pacific Railroad did convey and mortgage to the said Vail and Fish all the property, real and personal, rights, interests, and franchises of the said Pacific Railroad, as set forth in the said mortgage of the date last above referred to, and more particularly described as follows, that is to say:

1. All and singular the entire line of the Pacific Railroad [of Missouri], two hundred and eighty-three miles in length, extending from the depot at Seventh street, in the city of St. Louis, State of Missouri, to the western boundary of said State, at Kansas City and passing through the counties of St. Louis, Franklin, Gasconade, Osage, Cole, Moniteau, Morgan, Cooper, Pettis, Johnson, Cass, and Jackson, in said State of Missouri, with its appurtenances,
42 including, among other things, the track on Poplar street and the levee, in the city of St. Louis, commonly known as the "Poplar street track," and including the real estate, depots, stations, machine-shops, rolling-stock, machinery, rights, and interests, and franchises of said railroad, subject to the liens of the two mortgages described in the bill of complaint, severally executed by said Pacific Railroad, one of which was so executed to said Murdock, Punnett, and Clark, and the other of which was executed to Edwin D. Morgan and Seligman.

2. All and singular the following described real estate in the city of St. Louis, State of Missouri, viz: Four blocks of ground in the city of St. Louis, being city blocks numbered four hundred and eighteen, four hundred and twenty-three, four hundred and twenty-eight, and four hundred and thirty-three, bounded east by Seventh street, south by Cerre street, west by Eleventh street, and north by Poplar street.

Also block number two hundred and thirteen, of the city of St. Louis, bounded east by Twelfth street, south by Austin street, west by Fourteenth street, and north by Randolph street—saving and excepting therefrom lots 26, 29, 33 and 34, the north one half of lot number 36, and part of lot number 25, embracing the southwest corner of said block, sixty-six feet eight inches on Fourteenth street, by one hundred feet on Austin street.

Also the following described real estate in city block number four hundred and thirty-eight, viz:

Beginning at the northwest corner of Eleventh and Cerre streets in the city of St. Louis, the southeast corner of said block; thence west along the north side of Cerre street one hundred and fifty-two feet and six inches, more or less, to an alley; thence north one hundred feet; thence east, parallel to Cerre street one hundred and fifty-two feet and six inches to Eleventh street; thence southwardly on the line of Eleventh street to the place of beginning.

Also the following, viz: Commencing at the southwest corner of city block number four hundred and thirty-eight, the northeast corner of Twelfth and Cerre streets; thence north one hundred and four feet and six inches; thence east one hundred and fifty-two feet and six inches to an alley; thence south one hundred and four feet six inches to Cerre street; thence west one hundred and fifty-two feet six inches to Twelfth street, the place of beginning.

And also the following described tract or parcel of land, viz: Commencing at the northwest corner of city block number four hundred and thirty-nine, the southeast corner of Twelfth and Cerre streets; thence south one hundred and seventy-six feet, more or less, to the south line of property of the Pacific Railroad; thence eastwardly along said south line to the northeast corner of said block four hundred and thirty-nine; thence along the south line of Cerre street to the place of beginning; being the same property mentioned and described in the bill of complaint as covered by the mortgage executed to Lackland and Durkee, and said premises being conveyed subject to the lien of said last-mentioned mortgage.

3. All and singular the branch railroad of the said Pacific Railroad, constructed and operated, and extending from a point on the main line at or near Kirkwood, thence to the termination of the said railroad at the Mississippi river at Carondelet or South St. Louis, with its appurtenances, including the depots, stations, machine-shops, superstructures, and erections on the line of said branch railroad, or at Carondelet aforesaid, together with all the side tracks and switches connected with said branch railroad, and
43 also all the lands acquired and appropriated, or that may be acquired or appropriated for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, or other superstructures, and erections, on the line of said branch railroad, or at Carondelet aforesaid; which said last-mentioned premises and property were so mortgaged, subject to the lien of a mortgage, to Jesse Seligman and James Baker, described in the bill of complaint.

Which said deed of trust or mortgage*d*, dated July 10th, 1875, was made to said Vail and Fish, described in the bill of complaint, as trustees and in trust to secure the payment of an issue of four thousand bonds, therein termed "third mortgage bonds" of one thousand dollars each, dated July 10th, 1875, payable twenty years after

date, to bearer in lawful money of the United States, at the office of the Atlantic and Pacific Railroad Company, in New York, with interest at seven per cent. per annum, from May 1st, A. D. 1875, in like lawful money, semi-annually on the first November and May in each year, on the presentation of the coupons annexed to said bonds. And it further appearing that said mortgage or deed of trust provides that if the said Pacific Railroad should fail to pay the interest on any of the said bonds thereby secured, for six months after the same should become due and payable and demand made therefor, said trustees were authorized and required, on the written request of the holders of bonds to the amount of five hundred thousand dollars, the principal or interest of which should then be in arrears or unpaid, to sell the said railroad and branch road in the complainant's bill described and set forth, and all the property by said mortgage conveyed, at public auction, in the city of St. Louis, at the time, on the terms, and in the manner set forth and described in the said mortgage; and to apply the net proceeds of said sale to the payment of all the bonds secured by said mortgage and then unpaid, *pro rata.*

And it further appearing that the said Pacific Railroad had, prior to the said 10th day of July, A. D. 1875, issued its bonds, amounting, in the aggregate, to the sum of fifteen hundred thousand dollars, and designated as "income bonds," each of which bonds was dated September 2d, 1872, and of which one thousand were for one thousand dollars each, and eight hundred were for five hundred dollars each, and one thousand for one hundred dollars each, payable on the first of September, 1892, with interest at seven per cent. per annum, on the first of March and September of each year; and it further appearing that the said Pacific Railroad had made a further issue of bonds, amounting, in the aggregate, to the principal sum of two millions of dollars and designated as "improvement bonds," consisting of two thousand bonds of one thousand dollars each, and dated December 15th, 1874, payable on the first of November, 1889, with interest at seven per cent. per annum, payable on the first of May and November in each year, on the presentation of the coupons annexed to said bonds; and it further appearing to the court that by the terms of said "third mortgage" it was provided that the said third mortgage bonds should be used in retiring and canceling the said issue of income bonds and improvement bonds, so far as the same could be done; and it further appearing that the entire amount of third-mortgage bonds secured by said mortgage were issued by said Pacific Railroad, and that a sufficient number of said bonds were placed in the hands of the trustees in said third mortgage mentioned, to wit, the said Vail and Fish, for the purpose of being exchanged for "income" and "improvement bonds;" and it further appearing that a portion of said bonds have been exchanged for "income" and "improvement bonds," and that
44 a portion of said bonds have been negotiated by said company; and it further appearing that a number of said bonds

are now in the possession of the said trustees, Vail and Fish; and it further appearing that of the said third mortgage bonds now outstanding none of the interest which became due on said bonds, or any of them, on the first day of November, A. D. 1875. has been paid, but that the whole amount thereof remains due and unpaid; and it further appearing that the said complainant, George E. Ketchum, is the holder and owner of ten of said "third mortgage bonds," secured by the aforesaid mortgage or deed of trust; that the said Cornelius K. Garrison is the owner and holder of fourteen hundred of said bonds, and that the said James Seligman is the owner and holder of three hundred and forty-seven of said bonds; and that the said Thomas W. Pierce is the owner and holder of fifty of said bonds, secured by said mortgage, and that the payment of the interest which became due on said eighteen hundred and seven bonds on the first day of November, A. D. 1875, was duly demanded on said day according to the tenor of said mortgage, and that the coupons representing said interest were presented for payment at the place where the same by the terms thereof are payable, and payment thereof demanded and refused. And it further appearing to the court that the interest of the said complainant and the interest of other holders of like bonds may be seriously affected by delay in the institution of proceedings to foreclose the said mortgage, inasmuch as by the terms of said mortgage the said trustees are not authorized to sell the property secured by said mortgage until six months after demand made for the payment of said interest.

Now, therefore, the court being fully advised in the premises, and by the consent of all the parties to this suit, through their solicitors of record, thereupon and in consideration thereof, it is ordered, adjudged, and decreed as follows, to wit:

That the said Pacific Railroad do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises, property, and franchises, and that the said Pacific railway and property, together with the franchises and appurtenances of the said railway company as in said deed of trust or mortgage, dated July 10, 1875, is described, be sold at public auction by Seymour D. Thompson, master in chancery of this court, to pay and satisfy the amounts due by said company upon said bonds, and any other indebtedness which the court may order to be paid out of the proceeds of said sale, together with the cost of suit and of said sale, including the services of said trustees and their solicitor's and attorney's fees in and about the management of said trust as may hereafter be ordered by this court; and that upon said sale the said master shall execute a certificate stating such sale and setting out the terms and conditions thereof, and that he report said sale and the terms and conditions thereof immediately after said sale to the court; and that upon the terms of such sale being complied with, and the sale approved and confirmed by the court, said master be, and he is hereby, authorized and directed to execute and

deliver to the purchaser or purchasers of said property good and sufficient deed or deeds for the same.

And it is further ordered, that upon the sale of the said road, property, and franchises, the said Seymour D. Thompson, master, shall require the payment by the purchaser of the sum of at least two hundred thousand dollars in cash, or the delivery to him of a good and sufficient bond with sureties to be by him approved, for the payment of such sum of $200,000 when and as soon as thereto required by the court.

45 And it is further ordered and decreed that the terms and conditions of said sale shall be the payment of said sum of two hundred thousand dollars cash, or the execution and delivery of the bond hereinbefore specified, on the delivery of the certificate of sale by said master, and that the balance of the sum bid shall, unless the purchaser be a bondholder or shall represent bondholders, be paid in cash at the confirmation of said sale, should said sale be confirmed; and if said purchaser shall be a bondholder, or represent bona fide bondholders, then, and in that event, should said sale be confirmed, he shall pay, or cause to be paid, in cash, said sum of two hundred thousand dollars, and also the pro rata proportion from the proceeds of such sale which may be by the said court then found due to the other bona fide bondholders, and the balance after such cash payment may be paid in bonds, bona fide owned or represented by him, the court expressly reserving for future consideration all questions as to the rights, priorities, and interests of all parties claiming any interest herein by way of bonds or otherwise.

And it is further ordered that the said master shall designate the time of making such sale, and shall advertise the same, together with a description of the property and franchises to be sold, by publication, showing the time, terms, and place of sale, and the property and franchises to be sold, to be inserted in the St. Louis Globe-Democrat, published in the city of St. Louis, Missouri; in the Evening Post, published in the city of New York, and in the Boston Journal, published in the city of Boston, for the period of sixty days in each of said newspapers, the same to be inserted in each of said papers once a week during the first three weeks of said period, three times a week during the second three weeks of said period, and once every secular day during the remaining portion of said period of sixty days, the last insertion to be at least two weeks before the day of such sale. And the receivers are directed, on the certificate of the master, to audit and pay the expenses of such advertising, and also the expenses of printing this decree.

It is further ordered, adjudged, and decreed that all the premises, property, and franchises covered by and embraced in the said mortgage sued on, viz., the mortgage dated July 10th, 1875, shall be sold in a body and not separately, so that the purchaser or purchasers at said sale shall acquire the whole of the property, premises, and franchises embraced in said last-named mortgage, subject to all prior mortgages.

It is further ordered, adjudged, and decreed that in case said road, property and franchises shall be purchased by bondholders, or by trustees for bondholders, then, at any time within sixty days after said sale, any bona fide holder or holders of said third mortgage bonds, secured by the mortgage sued on in this case, shall be allowed to become associated with said original purchaser or purchasers, in the property purchased, in the proportion that the bonds so held by him or them bears to the whole number of bonds issued, upon the same terms and conditions, with the same rights, subject to the same burdens and under the same scheme as may be provided for or agreed upon by said original purchaser or purchasers, for the purchasing and managing the property purchased, or for creating a corporation to which said property may be conveyed, provided that at the time of his election to share in such purchase he shall pay his proportion of the money and expenses paid by the original purchaser.

It is further ordered, adjudged, and decreed that any person or persons holding any of the "income bonds," or the "improvement bonds," above referred to, be, and they are hereby, authorized, at any time before the sale of said property, to exchange their income or improvement bonds for third mortgage bonds now held by the said trustees, Vail and Fish, as is provided in said third mortgage.

46

It is further ordered, adjudged, and decreed that nothing in this decree contained shall be construed to prejudice in any manner the claim of the county of St. Louis to a lien on the property and franchises of the said Pacific Railroad, alleged by the said county to exist, as fully appears by the amended petition in this cause filed by the said county for securing the payment of a certain debt of the said Pacific Railroad to said county for the sum of $1,00,000 and interest thereon, and alleged and claimed by the said county of St. Louis to be a prior lien therefor over all other incumbrances upon said property and franchises, the question of the existence and priority of said lien to be hereafter determined by this court—if not otherwise satisfactorily adjusted.

And it is further ordered and decreed that nothing herein contained, or proceedings had in this cause, shall in any manner affect the rights of the Boonville Branch Railroad, or its rights to rent therefor.

It is further ordered, adjudged, and decreed that any party purchasing under this decree shall, in addition to the two hundred thousand dollars provided to be paid as above, pay in cash such further sum, not exceeding two hundred thousand dollars, as when this court may require and direct to be paid, for the purpose of satisfying any statutory, equitable, or other lien claims that have been, or may be, filed in this case, or in the case of Calvin Littlefield *vs.* The Atlantic & Pacific Railroad Company and others pending in this court, and which have been, or may hereafter be, directed by the court to be paid by the receivers of either of said companies, and

which, on a hearing and final accounting had between the receivers of the said Atlantic & Pacific Railroad Company and the receivers of the said Pacific Railroad, in respect to said liens and payments, may be found to be due and owing to the receivers of the said Atlantic & Pacific Railroad Company.

And afterwards, on the 18th day of September, 1876, the following motion to confirm sale was filed, to wit:

In the United States circuit court for the eastern district of Missouri. In chancery.

GEORGE E. KETCHUM
vs.
THE PACIFIC RAILROAD and others.

Now comes the above-named complainant, by his solicitor, and moves the court to confirm the report of sale made by Seymour D. Thompson, in the above-entitled cause, under the order of this court, of the railroad and other property of the said Pacific Railroad and the other property therein named.

JAS. O. BRODHEAD,
Sol. for Complainant.

And afterwards, on the 6th day of October, 1876, the following further proceedings were had in said cause, to wit:

GEORGE KETCHUM *et al.*, Complainants,
vs.
THE PACIFIC RAILROAD *et al.*, Defendants.

47 Now at this day come the complainants, by their solicitors, and moved the court to confirm the sale of the Pacific Railroad, and its property and appurtenances and the franchises of said railroad company, and the real estate and other property mentioned and described in the order of sale made by this court at its last term in this cause, and it appearing to the court from the report of Seymour D. Thompson, master, appointed to make such sale, that the order of this court authorizing and requiring the said Seymour D. Thompson to make said sale, has in all respects been complied with, and that James Baker became the purchaser of said railroad franchises and property above mentioned and referred to for the sum of three millions of dollars.

Now therefore, it is ordered, adjudged and decreed that the said sale be, and the same is hereby, confirmed, according to the terms and conditions of the order of sale heretofore made by this court at its last term, and subject to the claim of the county of St. Louis to a prior lien thereon for seven hundred thonsand dollars, and interest thereon as the same has been or may be established by this court, or by the Supreme Court of the United States in case of appeal.

And be it further remembered, that on the 19th day of September, 1876, N. A. Cowdrey and others filed their certain motion and petition, in words and figures following, to wit:

(Which is omitted from printed record, and the amended petition given in lieu thereof; they are substantially the same; the first gave the name of Pierce as purchaser, when the fact, which is shown in the amended bill, is that Baker was the purchaser.)

And afterwards, on the 22d day of September, 1876, the said N. A. Cowdrey and others filed the following amended motion and petition in said cause, to wit:

Circuit court of the United States, eastern district of Missouri. In chancery, May term, 1876.

GEORGE E. KETCHUM and others
vs.
THE PACIFIC RAILROAD and others. } No. 703.

Amended motion for liberty to intervene to set aside decree of June 6th, 1876, and sale, and for liberty to demur, answer, plead or appeal as advised.

Your orators, N. A. Cowdrey, Robert L. Cutting, Jr., Peter Marié, Frank A. Otis, Jacob Cromwell, and George L. Kingsland, all citizens of the city and State of New York, and George R. Fearing, a citizen of Newport, State of Rhode Island, humbly and respectfully petition and show to this court:

1st. That they are, in the aggregate, the owners of ten thousand shares of the capital stock of the Pacific Railroad, defendant in the above-entitled suit, of the nominal or par value of $1,000,000; that your orators, as a committee or agents, or other holders of the same stock, represent, and have most of the stock represented by them in the actual custody of your committee, shares of said Pacific Railroad stock to the amount in the aggregate of about thirty-five thousand shares, which are of the par or nominal value of $3,500,000.

2d. That your orators bring this petition not only for their
48 own benefit, but for the benefit of all other holders or owners of the capital stock of said Pacific Railroad, who come in and contribute to the cost and expenses necessary for the prosec'tion of this suit.

3d. That the defendant, the Pacific Railroad (of Missouri) is a railroad company about 283 miles in length, extending from its depot in the city of St. Louis to Kansas City, on the western boundary of the State of Missouri, passing through Jefferson City, the capital of the State.

That it is mortgaged as follows:

The first mortgage at 6 per cent. gold	$7,000,000
The second " " 7 " U. S. currency (less payment made by the court or sinking fund)	2,741,000
3. The county of St. Louis 7 per cent	750,000
	$10,491,000
4. The mortgage sought to be foreclosed in this suit, the validity of which is denied by your orators, interest 7 per cent.	4,000,000
Real estate bonds, @ 7 per cent.	800,000
Car. branch bonds, @ 7 per cent.	500,000
Making a total of	$15,791,000

inclusive of the disputed mortgage and the amounts to your orators unknown, paid by the court on said sinking fund, the annual interest on which, at 7 per cent., the sum of $1,105,370.

The earnings of the mortgaged premises and its leased lines of road have been, as reported by the various persons in charge, for the time below named, as follows:

1869,	Gross, $3,213,000	Net, $973,000
1870,	" 3,500,000	" 945,000
1871,	" 3,598,000	" 946,800
1872,	" 3,606,004	" No report.
1873,	" 3,708,600	" 1,402,715
1874,	" 3,713,000	" 1,451,889
1875,	" 3,200,000	" No report.

The road was placed in the hands of this court in the latter part of 1875. The officers of the court, the receivers, report the gross earnings of the mortgaged premises and its leased lines to have been since December 30, 1875, to August 31, 1876—eight months—$2,312,357, which they report to be an increase over the corresponding period in 1875 of $470,767. The earnings for the best part of the year, the months in which the crops are more largely moved, and more supplies wanted in the country in return for said corps, viz., September, October, November, and December, are yet to be made and added to said $2,312,357. The indications are, as your orators believe and aver, that the earnings this year, 1876, will be at least $4,000,000.

Your orators aver that sixty per cent. of the gross earnings is a full and large allowance for operating expenses and that, allowing sixty per cent. for expenses, the forty per cent. net earnings, viz., $1,600,000, is a sum more than sufficient to pay the annual interest upon all the mortgage debts of the defendant, the Pacific Railroad —including the $4,000,000 disputed mortgage, upon which this suit is brought—which annual interest, as above shown, is the sum of $1,105,370.

49 Your orators aver that some of them have had long and varied experience in the litigation pertaining to railroads in this country, extending through a period of about twenty years, and that they have never known, heard, or read of any case where a court of equity has enforced the foreclosure of a mortgage where the property in the hands of the court itself was earning enough to pay the annual interest upon the debt which the court was enforcing the collection of, and they submit that in this case it is particularly inequitable so to do, because the loan purporting to be secured by the mortgage, by the written terms thereof submitted to the court, does not become due until May 1st, 1895.

4th. Your orators aver and charge, upon information and belief, that this court has been imposed upon, and has improvidently made its orders directing its receivers to pay large sums of money from the earnings of the premises in its custody, such as debts contracted by the Atlantic & Pacific Railroad Company, to a very large amount, and to pay very large sums which were junior in priority of lien and in equity to the lien which this suit was brought to enforce, and to the payment of large amounts as a sinking fund for the redemption or purchase of the second mortgage bonds above named, the principal of which does not become due until July, 1891. That the motive of the persons so procuring said improvident orders has been to use and make way with the net earnings and profits of the premises in the hands of the court, so that the same need not be applied in payment of the interest due upon the mortgage being foreclosed, and thus prevent a sale of the mortgaged premises; in other words, if the court had not made an improvident application of the moneys in its hands, the court itself would now have in its hands enough and more than enough money to pay the interest due, which this suit was brought to enforce the collection of.

5th. Your orators aver that the capital stock issued by the defendant, the Pacific Railroad Company, was issued to the amount of about $7,000,000; that the same is held and owned in scattering and mostly small lots by three to four hundred different persons, much of it by women, widows, and orphan children, who are obliged, from the necessity of their case, to look to this court to protect them against the combinations and conspiracies to injure them, made and entered into by C. K. Garrison and others, parties to this suit, directly or indirectly; and your orators, in behalf of said women, orphans, and unprotected stockholders, submit these facts and averments to this court for its consideration.

6th. Your orators show that at the present term of this court, viz., on the 6th day of June, 1876, the court made an order of sale of the mortgaged premises, and thereupon adjourned to Sept. 18th, 1876; that at the time, or just previous to said order of sale being made, the county of St. Louis withdrew its answer to the complaint, and also a cross-bill filed by them, which was then pending in this case, without any notice to your orators or to the stock-

holders of said Pacific Railroad; that, also, Thomas P. Akers, Esq., had filed an answer and a cross-bill on his own behalf of all the other stockholders, which was then pending in this court; and which, upon said 6th day of June, 1876, he withdrew, without any notice to the stockholders represented by him; that because of said adjournment of the court, there has been no day since said 6th day of June that your orators could lay their grievances before the court; that the master advertised the premises to be sold upon the 6th day of September, 1876, and at the time and place named in said advertisement he received proposals for the purchase of the mortgaged premises, which proposals he submitted to this court for its confirmation; that the Andrew Pierce who bid in said road at said master's sale on September 6th, 1876, purchased the same for James Baker, who is the solicitor of record of the defendant, Pacific Railroad, and a director in said railroad corporation; that said Pierce was also a director and general manager in said corporation until after the commencement of the original foreclosure suit, and until about the time said decree of sale was made, and that he is the same Pierce that is charged in said bill of said Cowdrey, and in the answers and cross-bills of said county of St. Louis, and of Thomas P. Akers, Esq., as being the general manager and director of the defendant, the Pacific Railroad, and as having illegally combined and conspired with others to wrong the stockholders of said Pacific Railroad by issuing said third mortgage, and then instituting a suit in the name of said Ketchum to foreclose the same, to the utter destruction of the stock interest in said Pacific Railroad. And that the said James Baker, solicitor of said Pacific Railroad, is the same person that, as such solicitor, consented to said decree, and was one of the sureties of said Pierce for the payment of $200,000 to the master, as required by said decree; and that he is one of the defendants in said Cowdrey bill, and charged in said bill and in the answer and cross-bill of the county of St. Louis, and of Thomas P. Akers, as combining and conspiring with others to wrong and defraud the stockholders of said Pacific Railroad, by whom he was elected a director or trustee, to represent and to act for them.

50

7th. Your orators further aver that at the annual meeting of the stockholders of the defendant, the Pacific Railroad, held in St. Louis, March 27th, 1876, the stockholders unanimously passed the following resolution:

"Resolved, That the stockholders respectfully request the directors to employ Messrs. Glover & Shepley to aid in defending the company in foreclosure suits now pending against it (this suit,) and also the proceedings in bankruptcy pending against the company."

That the directors, in bad faith to the stockholders, and without any notice to the stockholders, continued the employment of James Baker, Esq., who, on the 6th of June, 1876, consented to said decree as counsel for the company.

8th. Your orators further show that the decree of sale made by

this court on the said 6th day of June, 1876, was improvident and illegal, and should be set aside, because, as your orators aver, the said decree provided as follows: "That in case said road, property, and franchises, shall be purchased by bondholders, or by trustees for bondholders, then at any time within sixty days after said sale any *bona fide* holder or holders of said third-mortgage bonds, secured by the mortgage sued on in this case, shall be allowed to become associated with said original purchaser or purchasers in the property purchased in the proportion that the bonds so held by him or them bears to the whole number of bonds issued, upon the same terms and conditions, with the same rights, subject to the same burdens, and under the same scheme as may be provided for or agreed upon by said original purchaser or purchasers for the purchasing and managing the property purchased, or for creating a corporation to which said property may be conveyed, provided that at the time of his election to share in such purchase he shall pay his proportion of the money and expenses paid by the original purchaser."

51 Your orators aver that the above improvident provision in said decree had the direct effect to deter bidders at said master's sale; that if any person desiring to purchase the premises, and owning five or ten bonds, bid at such sale and furnished the entire money, as required by said decree, he might be required, sixty days after he put up said money, to accept strangers as copartners with him in said purchase, in the proportion as $5,000 of bonds, if he owned that amount, bears to $4,000,000, the whole amount of the mortgage—that is to say, his interest in the purchase would be reduced to one-eighth of one per cent., or say, 1-800th part, and he would temporarily have to furnish all the money with which to make the purchase. Your orators believe and allege that few, if any, sane business men or capitalists would compete at a foreclosure sale made upon that principle.

9th. Your orators further aver that said decree of June 6th is improvident and illegal, because they say that it does not find any fixed amount of debt to be due the complainants, but leaves the same unsettled and undetermined; if by implication it finds it to be the amount of the principal and interest, then your orators aver that the complaint in this case, by the exhibit attached thereto, the same being a copy of the mortgage which this court is asked to foreclose, shows that the principal of said debt, viz., $4,000,000, is not due until May, 1895; that the complaint and the decree itself shows that the whole amount of $4,000,000 was not issued, but that millions of dollars were held to be exchanged for income and improvement bonds, which your orators aver may never be exchanged, and, whether they are or not, the court should, by its master, find the exact amount of the debt due them, secured by said mortgage for which the foreclosure sale was ordered to be made; that the court is improvidently and illegally omitted to require an account from its receivers, to the end that what money was then or was likely

before the sale to come into their possession might be applied in liquidation of the debt.

Your orators aver that the court in said decree of the 6th of June, 1876, has omitted to find the necessary facts upon which to base said decree as required by the laws of the United States and by the rules of the Supreme Court of the United States applicable to this cause.

Your orators aver that said decree, made June 6th, 1876, is improvident and illegal, in this, that it wholly fails to give the Pacific Railroad any time within which to pay such or whatever debt is or ought to have been found to have been due; but declares said Pacific Railroad to be absolutely debarred and foreclosed of and from all equity of redemption in and to said mortgaged premises. Whereas, as your orators aver, the said decree should have fixed some reasonable time in the future within which said Pacific Railroad might pay the debt established by the court, if any such debt was established, or thereafter to be barred and foreclosed.

For which reason said decree should be vacated, set aside, and for nothing had.

Your orators aver that by the 16th section of the constitution of State of Missouri, "the rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property;" that the mortgage on which this suit is brought purports to embrace all the rolling stock, equipment, and suppl'es owned by said Pacific Railroad Compa'y, which the constitution declares to be personal property.

Your orators aver, upon information and belief, that said mortgage was never recorded as the laws of the State of Missouri
52 requires that mortgages of personal property should be recorded; and hence they say that said decree of July 6th, 1876, should be set aside, and for nothing had, because it embraces personal property, concerning which the law has not been complied with.

10th. Your orators aver that this cause and the decree therein, entered June 6th, 1876, is one "where a writ of error may be a supersedeas," and that by the laws of the United States an execution could not issue thereon until the expiration of sixty days from the entry of said decree, which would be on and after August 7th, 1876, the 6th of August being Sunday; that notwithstanding said law the master issued and advertised his order to sell said premises —which in equity is an execution—on and before June 22d, 1876, which is only sixteen days after the entry of said decree, thus disregarding the law of the United States requiring sixty days to have elapsed after the entry of decree and before the issue of execution.

11th. Your orators aver that said decree, made June 6th, 1876, is in violation and in total disregard of the statute of the United States, which by the 983d section of the Revised Statutes, requires "the bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifi-

cations and copies of papers necessarily obtained for use on trials in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of the judgment or decree against the losing party;" that said decree, made June 6th, 1876, wholly omits to tax costs in favor of the prevailing party, as required by said statute. Wherefore, your orators say that said decree is illegal, and should be set aside and for nothing had.

12th. Your orators aver that in addition to the many and divers reasons why said bonds upon which said complaint is brought are not a valid debt or a lien upon the property now in the possession of the court, upon information and belief, they allege that the said Pacific Railroad had deposited a large number of said bonds upon which this suit was brought, your orators believe about $2,500,000, with certain national banks organized under the laws of the United States, among others the National Bank of Commerce of the city of New York, which national banks, contrary to law, made loans upon said bonds. Now your orators aver that banks organized under the national banking law are only authorized to lend money upon personal security, and that they are not authorized to lend upon real-estate securities; that railroad bonds are real-estate securities; that said banks sold said bonds to the amount of $1,400,000 to C. K. Garrison, one of the parties to this suit; that said Garrison and other present holders took them with full knowledge of the defect in the title to said bonds in said banks, knowing that the banks could give no better title to said bonds than they themselves had, and that the courts had construed this law, saying that the national banks could neither take or give title to railroad bonds or other real-estate securities (see Fowler vs. Scully, 72 Penn. Rep., p. 456); that other amounts of said bonds were sold by said banks to others than Garrison, who now claim to hold said bonds as a valid lien against the Pacific Railroad, defendants; that because of said defect in title, said Garrison and others were enabled to get said bonds at one-half their nominal or par value; that all or nearly all of the present holders of said bonds have acquired them since this suit was commenced, and since the court appointed its receiver to take care of said premises, hence the said bonds are now, and at the time said decree of June 6th, 1876, was entered, are held by
53 the present owners, subject to all the equities existing between the makers and the holders thereof at the time said suit was commenced, and at the time of the appointment of receivers by the court.

13th. Your orators aver, that previous to the rendition of said decree of June 6th, 1876, the county of St. Louis, on its own behalf, as a creditor and a stockholder of said Pacific Railroad, and Thomas P. Akers, Esq., as a stockholder on his own behalf, and on behalf of all other stockholders, each filed their cross-bill and answer to the complaint in this case, and that they each and both withdrew the same on the day said decree was rendered. Your orators pray that

they may be allowed to refer to said answers and cross-bills as if the same were now pending, and as if they were set out at length in this motion.

14th. Your orators aver, that on or about the 2d day of February, 1876, they authorized and procured N. A. Cowdrey, one of the present petitioners for liberty to intervene in this cause, to commence a suit by bill in equity in this court, against the Pacific Railroad, the Atlantic & Pacific Railroad Company, Andrew Pierce, of the city of Boston, C. K. Garrison, of New York, and Henry F. Vail and James D. Fish, to whom the mortgage sought to be foreclosed was made in trust to secure the payment of the bonds, and others, directors in said Pacific Railroad, and directors in said Atlantic & Pacific Railroad Company.

That said suit is now pending in this court; that said bill alleges fraud and collusion in the making and issue of said $4,000,000 of bonds on which this suit of foreclosure is brought, committed by Andrew Pierce and others against the stockholders of said Pacific Railroad; that the bill prays, among other things—

For an account to be stated between the Pacific Railroad and the Atlantic & Pacific Railroad Company, the complainant, alleging an indebtedness from the Atlantic Railroad Company to the Pacific Railroad of $3,000,000, and upwards.

For an account to be stated between the Pacific Railroad and Andrew Pierce, Joseph Seligman, and Jesse Seligman, alleging an indebtedness from them to said Pacific Railroad.

For a cancellation of the outstanding income, improvement, and third-mortgage bonds, alleging the same to have been issued in fraud of the rights of the stockholders of the Pacific Railroad.

For such other and different relief as to equity appertains.

Your orators humbly pray the court to allow them to refer the said bill in equity in said Cowdrey case, the same as if it were set out here at length.

15th. Your orators humbly pray the honorable court to take their cause into consideration, and upon finding their allegations and averments to be true, to make an order of this court that your orators may be allowed to intervene as parties defendants in this cause, and they be authorized to make answer, plead, demur, or to appeal as they by their counsel shall be advised; and that the decree of June 6th, 1876, and sale thereunder, be set aside and for nothing had. Or that you will grant such other relief as to equity appertains.

Certain interlineations at folio 22 were made herein before affidavit made hereto.

And your orators as in duty bound will ever pray.

GLOVER & SHEPLEY,
Solicitors.

NEW YORK, *September* 19, 1876.

54 NEW YORK CITY AND STATE,
September 19*th*, 1876.

Personally appeared before the undersigned authority, authorized by act of Congress to administer oaths in such cases, N. A. Cowdrey and Robert L. Cutting, Jr., who each being by me duly sworn, made oath that the foregoing instrument or petition is true of their own knowledge, except those matters charged upon information and belief, and that they believe them to be true.

N. A. COWDREY.
R. L. CUTTING, JR.

[SEAL.] CLARENCE M. HYDE,
Notary Public for the City and County of New York.

And at the September term of said court, on the 3d day of October, 1876, the following further proceedings were had in said cause, to wit:

GEORGE E. KETCHUM *et al.*, Complainants,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

This day come the said parties by their solicitors, and also come N. A. Cowdrey and others, by their solicitors, Messrs. Glover & Shepley, and the motion of said Cowdrey and others for liberty to intervene to set aside the decree and sale herein was argued by counsel, and submitted to the court; on consideration whereof, and being fully advised in the premises, it is ordered by the court that said motion be denied.

It is further ordered that the motion of N. A. Cowdrey and others for leave to file a petition to set aside the decree of foreclosure and sale thereunder for want of jurisdiction, be, and the same is hereby, denied.

And afterwards, at said term of court, and on the 3d day of October, 1876, the following proceedings were had in the said matter of Mary Robb Miltenberger, to wit:

GEORGE E. KETCHUM *et al.*, Complainants,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

This day come the said parties by their solicitors, and also comes Mary Robb Miltenberger, by their solicitors, Messrs. Glover & Shepley, and the motion of said Miltenberger for liberty to intervene to set aside the decree and sale herein, coming on to be heard, was argued by counsel and submitted to the court; on consideration whereof, and being fully advised in the premises, it is ordered by the court that said motion be denied.

It is further ordered that the motion of Mary Robb Miltenberger for leave to file petition to set aside decree of foreclosure and sale thereunder, for want of jurisdiction, be, and the same is hereby,

denied; and thereupon the said Mary R. Miltenberger, by her said solicitors, makes application for an order allowing an appeal to the Supreme Court of the United States, from the said orders of this court, which being submitted and heard, it is ordered that said application be denied.

55 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 23d day of October, A. D. 1876, at a regular stated term of the circuit court of the United States in and for the eastern district of Missouri, begun and holden at the city of St. Louis, in said district, on the 18th day of September, 1876, the following among other proceedings were had, to wit:

Order requiring Baker to pay $50,000, *and to give bond for* $550,000.
Made Oct. 23*d*, 1876.

GEORGE E. KETCHUM *et al.*, Complainants.
vs.
THE PACIFIC RAILROAD *et al.*, Defendants.

In the above-entitled cause, on motion of complainants, by their solicitor, James O. Broadhead, Esquire, it appearing to the court that James Baker, the purchaser of the railroad and other property heretofore ordered to be sold, represents as said purchaser bona fide bondholders, as in the decree heretofore entered in this cause is specified:

It is ordered that said Baker pay into the registry of this court, in cash, the sum of fifty thousand ($50,000) dollars, and execute a bond, with security to be approved by the court, in the sum of five hundred and fifty thousand ($550,000) dollars, to secure the payment of such sums as may from time to time be ordered by this court in pursuance of the terms of said sale.

And thereafter, on said 23d day of October, A. D. 1876, the following further proceedings were had in said cause, as appears of record, t o wit:

GEORGE E. KETCHUM *et al*, Complainants,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Now again comes James O. Broadhead, Esquire, solicitor for the complainants in said cause, and James Baker, Esquire, the purchaser of the property under the decree of foreclosure heretofore made in this case, and it appearing to the court that said James Baker has paid into the registry of this court the sum of fifty thousand dollars, as heretofore ordered by this court, and also that the said Baker has delivered to Seymour D. Thompson, Esquire, master in chancery

of this court, who made said sale, three thousand nine hundred and forty-eight third mortgage bonds in behalf of certain third mortgage bondholders represented by him, in part payment of the purchase of said property under the previous decrees of this court, and the said Baker having also given and filed in this court his bond in the sum of five hundred and fifty thousand ($550,000) dollars, with Cornelius K. Garrison, Darius R. Mangam, and Charles P. Chouteau as sureties, conditioned as required by the court; and said parties to said bond having in open court jointly and severally acknowledged themselves and each of them to be bound to perform each and all of the obligations of said bond as therein recited, which said bond has been approved by the court, and is in words and figures following, to wit:

56 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of the United States in and for said district.
In chancery.

GEORGE E. KETCHUM and als.
vs.
THE PACIFIC RAILROAD and als.

Whereas by the judgment and decree of the circuit court of the United States in and for the eastern district of Missouri, had on the sixth day of June, A. D. 1876, in the above-entitled cause, Seymour D. Thompson, master in chancery, was ordered to sell the road and its appurtenances, and the franchises and other property of the said "Pacific Railroad," in said judgment mentioned, and on the terms therein specified;

And whereas, in pursuance of said judgment, decree, and order, the said road and property was, on the 6th day of September, A. D. 1876, sold by the said master to James Baker for the sum of three millions of dollars ($3,000,000), which said sale has been approved by this court;

And whereas a large portion of said purchase price has been paid by said purchaser, by the delivery to said master of three thousand nine hundred and forty-eight (3,948) bonds of the issue of the so-called third-mortgage bonds of the "Pacific Railroad," in accordance with the terms of said order of sale;

And whereas by the terms of said judgment, decree, and order of sale, it was provided that in addition to the sum of two hundred thousand dollars ($200,000) therein required to be paid, and for which a bond in the last-named amount has been given by the purchaser, as provided therein, it was also provided that further sums of moneys should be paid by the purchaser in cash as might be required by order of the court;

Now, therefore, for the purpose more effectually of carrying out the object of said last-named judgment, decree, and order on the part of the purchaser, and of providing and securing the payment

of such equitable claims as are contemplated by said order to be paid, and the payment of the pro rata proportion of the outstanding third-mortgage bonds not delivered by the purchaser to said master, and also for the purpose of meeting and liquidating the outstanding liabilities incurred by the receivers of the said railroad and property and the costs and expenses of this suit,

We, the undersigned, James Baker, as principal, and Cornelius K. Garrison, Darius Mangam, and Chas. P. Choteau, as his securities, are held and firmly bound unto Seymour D. Thompson, master in chancery, in the sum of five hunded and fifty thousand dollars ($550,000) well and truly to be paid.

Conditioned, that if the said James Baker shall abide by the terms of said decree of sale, and pay such sums of money, not exceeding in the aggregate the sum of five hundred and fifty thousand dollars, as may, from time to time, be awarded against him by any interlocutory or final decree or order of this court in said cause, then this obligation to be void, otherwise to remain in full force and effect. And in default of payment as aforesaid, within ten days after demand therefor by the person or persons in whose favor said order of court may be made, said obligors herein hereby con-
57 sent that judgment may be entered agaist them jointly and severally for the respective sums so ordered to be paid, and in favor of the person or persons to whom the same may be payable, and that execution may issue thereon.

In witness whereof we hereunto severally sign our names and affix our seals this the 23d day of October, A. D. 1876.

JAMES BAKER. [SEAL.]
C. K. GARRISON. [SEAL.]
DARIUS R. MANGAM. [SEAL.]
CHAS. P. CHOTEAU. [SEAL.]

It is therefore, ordered that said bond be filed among the records of the court in this case.

It is further ordered, that the bond for the sum of two hundred thousand ($200,000) dollars heretofore given by James Baker and others in accordance with the order of sale in this cause be and the same is hereby cancelled.

THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered, that on the 24th day of October, A. D. 1876, at a regular stated term of the circuit court of the United States, in and for the eastern district of Missouri, begun and holden at the city of St. Louis in said district, on the 18th day of September, 1876, the following, among other proceedings, were had, to wit:

GEORGE E. KETCHUM, Complainant,
vs.
PACIFC RAILROAD *et al.*, Defendants.

Now comes the complainant, by James O. Broadhead, Esq., and James Baker, Esq., and Seymour D. Thompson, Esq., master in chancery, and it appearing to the court that the property and franchises hereinafter described, have been duly sold in accordance with the decree and order of the court heretofore made and rendered in this case, and that the conditions of said sale have in all respects been duly complied with by the said James Baker, the purchaser of said property, and that he is entitled to a deed thereof; and Seymour D. Thompson, Esq., the master in chancery, who made said sale, having submitted to the court a deed in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri:

This indenture, made in triplicate this twenty-fourth day of October, A. D. 1876, by and between Seymour D. Thompson, Esquire, a master in chancery of the United States circuit court for the eastern district of Missouri, duly appointed and qualified as such, party of the first part, and James Baker, Esquire, as party of the second part, witnesseth:

That whereas the Pacific Railroad, a corporation chartered and existing under and by virtue of the laws of the State of Missouri, did, on the 10th day of July, A. D. 1875, make and deliver to Henry F. Vail and James D. Fish, trustees, its mortgage or deed of trust, of that date, by which the said Pacific Railroad did convey and mort-
gage to the said Vail and Fish all the property, real and per-
58 sonal, rights, interests and franchises of the said Pacific Rail-
road, to secure certain bonds therein mentioned and described, as set forth in the said mortgage, and which is hereinafter more particularly described;

And whereas George E. Ketchum, a holder of certain of the bonds secured by said mortgage, did on the eleventh day of November, A. D. 1875, exhibit his bill of complaint in the circuit court of the United States, in and for the district aforesaid, praying that the equity of redemption in and to the property, interests, and franchises embraced in said mortgage or deed of trust, be forever barred and foreclosed, and that said property, interests, and franchises, be sold to enforce the lien of the same, and to satisfy the debt thereby secured;

And whereas such proceedings were had under the said bill of complaint in said court that, at an adjourned term thereof, and on the sixth day of June, A. D. 1876, a decree was entered thereunder—the name and style of the said cause being "George E. Ketchum et al., complainants, against the Pacific Railroad et al., defendants, No. 703, in equity"—that the said Pacific Railroad should stand absolutely debarred and foreclosed of and from all equity of re-

demption of, in and to the said mortgaged premises, property and franchises, and that the Pacific Railroad property, together with the franchises and appurtenances of the said railway company as in said deed of trust or mortgage, dated July 10, 1875, is described, should be sold at public auction by the undersigned, Seymour D. Thompson, master in chancery of said court, to pay and satisfy the amounts due by said Pacific Railroad upon said bonds and any other indebtedness which the court might order to be paid out of the proceeds of said sale, together with the costs of said suit and of sale, including the services of said trustees, and their solicitors' and attorneys' fees in and about the management of said trust, as might thereafter be ordered by the court; and which decree further provided that, upon said sale, the said master should execute a certificate stating such sale and setting out the terms and conditions thereof, and that he should report said sale and the terms and conditions thereof immediately after said sale to the court; and that upon the terms of such sale being complied with, and the sale approved and confirmed by the court, said master should be, and he was by said decree authorized and directed to execute and deliver to the purchaser or purchasers of said property a good and sufficient deed or deeds for the same;

And whereas it was further provided in said decree that upon the sale of said road, property and franchises, the undersigned, Seymour D. Thompson, master, should require the payment by the purchaser of the sum of at least two hundred thousand dollars in cash, or the delivery to him of a good and sufficient bond with sureties to be by him approved, for the payment of such sum of two hundred thousand thousand dollars, when and as soon as thereto required by the court;

And whereas it was further ordered and decreed that the terms and conditions of said sale should be the payment of said sum of two hundred thousand dollars cash, or the execution and delivery of the bond thereinbefore specified, on the delivery of the certificate of sale by said master, and that the balance of the sum bid should, unless the purchaser were a bondholder, or should represent bondholder, be paid in cash at the confirmation of said sale, should said sale be confirmed; and if said purchaser should be a bondholder, or represent bona fide bondholders, then and in that event, should said sale be confirmed, that he should pay, or cause to be paid, in cash, said sum of two hundred thousand dollars, and also
59 the pro rata portion from the proceeds of such sale, which might be by the said court then found due, to the other bona fide bondholders; and that the balance after such cash payment might be paid in bonds, bona fide owned or represented by him, the court expressly reserving for future considerations all questions as to the rights, priorities and interests of all parties claiming any interest herein by way of bonds or otherwise;

And whereas it was further ordered in said decree, that the undersigned, master in chancery, should designate the time of making

such sale, and should advertise the same, together with a description of the property and franchises to be sold, by publication showing the time, terms, and place of sale, and the property and franchises to be sold, to be inserted in the St. Louis Globe-Democrat, published in the city of St. Louis, Missouri, in the Evening Post, published in the city of New York, and in the Boston Journal, published in the city of Boston, for the period of sixty days in each of the said newspapers, the same to be inserted in each of said newspapers once a week during the first three weeks of said period, three times a week during the second three weeks of said period, and once every secular day during the remaining portion of said period of sixty days, the last insertion to be at least two weeks before the day of such sale;

And whereas it was further ordered, adjudged, and decreed in said decree, that all the premises, property and franchises covered by, and embraced in, the said mortgage sued on, viz.: the mortgage dated July 10, 1875, should be sold in a body and not separately, so that the purchaser, or purchasers, at said sale should acquire the whole of the property, premises, and franchises embraced in said last named mortgage, subject to all prior mortgages;

And whereas it was further ordered, adjudged, and decreed in said decree, that in case said road, property, and franchises should be purchased by bondholders, or by trustees for bondholders, then at any time within sixty days after said sale, any bona fide holder, or holders, of said third mortgage bonds, secured by the mortgage sued on in said cause, should be allowed to become associated with said original purchaser, or purchasers, in the property purchased, in the proportion that the bonds held by him or them should bear to the whole number of bonds issued, upon the same terms and conditions, with the same rights, subject to the same burdens and under the same scheme as might be provided for or agreed upon by said original purchaser or purchasers, for the purchasing and managing the property purchased, or for creating a corporation to which said property might be conveyed, provided that at the time of his election to share in said purchase he should pay his proportion of the money and expenses paid by the original purchaser;

And whereas it was further ordered, adjudged, and decreed, that nothing in said decree contained should be construed to prejudice in any manner the claim of the county of St. Louis to a lien on the property and franchises of the said Pacific Railroad, alleged by the said county to exist, as fully appeared by the amended petition in said cause filed by the said county for securing the payment of a certain debt of the said Pacific Railroad to said county for the sum of seven hundred thousand dollars and interest thereon, and alleged and claimed by the said county of St. Louis to be a prior lien therefor over all other incumbrances upon said property and franchises, the question of the existence and priority of said lien to be thereafter determined by the court, if not otherwise satisfactorily adjusted.

And whereas it was further ordered and decreed in said
60 decree, that nothing therein contained, or proceedings had in said cause should in any manner affect the rights of the Boonville Branch Railroad, otherwise known as the Osage Valley and Southern Kansas Railroad Company, Boonville Extension, or its rights to rent therefor;

And whereas it was further ordered, adjudged, and decreed in said decree, that any party purchasing under said decree should, in addition to the two hundred thousand dollars provided to be paid as above, pay in cash such further sum not exceeding two hundred thousand dollars, as and when this court might require and direct to be paid, for the purpose of satisfying any statutory, equitable, or other lien claims that had been or might be filed in said cause, or in the case of Calvin Littlefield v. The Atlantic and Pacific Railroad Company and others, pending in said court, and which had been or might thereafter be directed by the court to be paid by the receivers or either of said companies, and which, on a hearing and final accounting had between the receivers of the said Atlantic and Pacific Railroad Company, and the receivers of the Pacific Railroad, in respect to said liens and payments, might be found to be due and owing to the receivers of the said Atlantic and Pacific Railroad Company;

And whereas I, the undersigned, master in chancery, did, in pursuance of the terms of said decree, designate Wednesday, the sixth day of September, A. D. 1876, between the hours of eight o'clock a. m. and four o'clock p. m. as the time of making such sale, and did advertise the same, together with a description of the property and franchises to be sold by publication showing the time, terms, and place of sale, and the property and franchises to be sold, which advertisement was inserted in the St. Louis Globe-Democrat, published in the city of St. Louis, Missouri, in the Evening Post, published in the city of New York, and in the Boston Journal, published in the city of Boston, for the period of sixty days, in each of said newspapers, beginning on Thursday, the twenty-second day of June, A. D. 1876, and ending on Tuesday, the twenty-second day of August, A. D. 1876, the said advertisement having been inserted in each of said papers once a week during the first three weeks of said period, three times a week during the second three weeks of said period, and once every secular day during the remaining portion of said period of sixty days, the last insertion having been at least two weeks before the day of such sale;

And whereas proof of publication of the said advertisement, as required by said decree, was duly made and lodged with the undersigned, in conformity to the statute of the State of Missouri, in such cases made and provided, which proof was duly filed by the undersigned, master in chancery, among the papers in said cause in the office of the clerk of said court, as an exhibit to his report of said sale, as hereinafter named;

And whereas I, the undersigned, master in chancery, did, on the

sixth day of September, A. D. 1876, at the hour of twelve o'clock meridian, at the east door of the court-house in the city of St. Louis, Missouri, after reading to the persons there assembled a duly certified copy of the decree aforesaid, and also a copy of the said advertisement, expose to sale at public auction, in a body, not separately, and subject to all prior liens and mortgages, as provided for in said decree, all the property, rights, interests, and franchises of the said Pacific Railroad (of Missouri) described in the said mortgage or deed of trust, dated July 10, 1875, made by said Pacific Railroad to Henry F. Vail and James D. Fish, trustees, and hereinafter more particularly described;

And whereas James Baker, the party of the second part
61 herein named, did then and there bid for the said property, franchises and estate, subject to all prior liens and mortgages, as provided in said decree, and subject also to all the terms, limitations and conditions named in said decree, the sum of three million dollars, ($3,000,000,) and he being the highest and best bidder, and no other person, after full and fair notice given, being willing to offer any advance upon said bid, the said property, franchises and estate were then and there sold to him, the said John Baker, subject to all prior liens and mortgages, as provided in said decree, and subject also to all the terms, limitations, and conditions named in said decree and hereinbefore set forth;

And whereas the said James Baker did thereupon sign an acknowledgment of the fact and amount of his said bid, and did then and there execute and deliver to the undersigned, master in chancery, a bond to secure the payment of the sum of two hundred thousand dollars, as provided for in the said decree, and the said James Baker and the sureties whose names appear on said bond, did acknowledge their signatures and seals to the same in the presence of the undersigned, and the said bond was by the undersigned found to be a good and sufficient bond to secure the sum in question, and was therefore approved by the undersigned;

And whereas afterwards, to wit, on the 15th day of September, A. D. 1876, I, the undersigned, master in chancery, did lodge, in the office of the clerk of said court, my report of said sale, addressed to the judges of the said court, and setting forth fully my doings under the said decree;

And whereas afterwards, to wit, on the seventh day of October, A. D. 1876, a decree was entered in the said cause, reciting that the said sale was in all respects regular and in accordance with the terms and requirements of said decree, and ordering that the same be confirmed;

And whereas the said James Baker, party of the second part, did on the 20th day of October, A. D. 1876, deliver to the undersigned in part payment of his said purchase, three thousand nine hundred and forty-eight (3,948) bonds of the Pacific Railroad, known as third mortgage bonds, for the payment of one thousand dollars ($1,000) each, dated July 10th, 1875, signed by Samuel Hays, president of

the Pacific Railroad, and countersigned by J. L. Dearborn, treasurer of said corporation, and sealed with their corporate seal; and did on the 23d day of October, A. D. 1876, pay into the registry of the court the sum of fifty thousand dollars ($50,000) in cash, and did on the same day enter into a bond with sureties then and there by the court approved to pay such further sum, not exceeding five hundred and fifty thousand dollars ($550,000), whenever required by the court, and in such instalments as the court should require;

And whereas such payments of bonds and of money, and the giving of such bond, were accepted by the court as a compliance on the part of the said James Baker, party of the second part, with the terms and conditions of said sale, it having been adjudged by the court that he purchased the said property, franchises and estate as the representative of bona fide bondholders;

And whereas, on the twenty-third day of October, A. D. 1876, an order was entered in said cause requiring the undersigned, master in chancery, to make and deliver to the said James Baker, party of the second part, this deed of conveyance of the property, franchises and estate embraced in said mortgage, decree and sale, the court having first approved said deed in substance and in form:

Now, therefore, in consideration of the premises and by
62 virtue of the powers vested in me by my said office of master in chancery of said court, and by the decrees and orders aforesaid, and in obedience to the said decrees and orders, and in order to give effect to the same, I, the said party of the first part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell and convey unto the said James Baker, party of the second part, his heirs and assigns, forever, subject to the terms, limitations and restrictions enumerated in said decree of June sixth, 1876, all the right, title, interest, and estate of the Pacific Railroad in and to the property and franchises embraced in the deed of mortgage, bearing date of July the tenth, A. D. 1875, as aforesaid, and also as described in said decree of foreclosure and sale, and in the advertisements of said sale as aforesaid, as follows, that is to say:

1. All and singular the entire line of the Pacific Railroad (of Missouri), two hundred and eighty-three miles in length, extending from the depot at Seventh street, in the city of St. Louis, State of Missouri, to the western boundary of said State, at Kansas City, and passing through the counties of St. Louis, Franklin, Gasconade, Osage, Cole, Monitau, Morgan, Cooper, Pettis, Johnson, Cass, and Jackson, in said State of Missouri, with its appurtenances, including, among other things, the track on Poplar street and the levee in the city of St. Louis, commonly known as "the Poplar street track," and including the real estate, depots, stations, machine shops, rolling stock, machinery, rights, and interests, and franchises of the said railroad company, subject to the liens of the two mortgages described in the said bill of complaint, severally executed by said Pacific Railroad, one of which was so executed to Murdock, Punnett

and Clark, and the other of which was executed to Edwin D. Morgan and Joseph Seligman.

2. All and singular the following described real estate in the city of St. Louis, State of Missouri, viz: Four blocks of ground in the city of St. Louis, being city blocks numbered four hundred and eighteen, four hundred and twenty-three, four hundred and twenty-eight, and four hundred and thirty-three, bounded east by Seventh street, south by Cerre street, west by Eleventh street, and north by Poplar street; also, block number two hundred and thirteen, of the city of St. Louis, bounded east by Twelfth street, south by Austin street, west by Fourteenth street, and north by Randolph street, saving and excepting therefrom lots 26, 29, 33 and 34, the north one-half of lot number 36, and part of lot number 25, embracing the southwest corner of said block, sixty-six feet eight inches on Fourteenth street, by one hundred feet on Austin street.

Also, the following described real estate in city block number four hundred and thirty-eight, viz:

Beginning at the northwest corner of Eleventh and Cerre streets, in the city of St. Louis, the southeast corner of said block; thence west along the north side of Cerre street one hundred and fifty-two feet and six inches, more or less, to an alley; thence north one hundred feet; thence east parallel to Cerre street one hundred and fifty-two feet and six inches, to Eleventh street; thence southerly on the line of Eleventh street to the place of beginning.

Also, the following, viz: Commencing at the southwest corner of city block number four hundred and thirty-eight, the northeast corner of Twelfth and Cerre streets; thence north one hundred and four feet and six inches; thence east one hundred and fifty-two feet and six inches, to an alley; thence south one hundred and
63 four feet six inches to Cerre street; thence west one hundred and fifty-two feet six inches, to Twelfth street, the place of beginning.

And also the following described tract or parcel of land, viz: Commencing at the northwest corner of city block number four hundred and thirty-nine, the southeast corner of Twelfth and Cerre streets; thence south one hundred and seventy-six feet, more or less, to the south line of property of the Pacific Railroad; thence eastwardly, along said south line, to the northeast corner of said block four hundred and thirty-nine; thence along the south line of Cerre street to the place of beginning; being the same property mentioned and described in said bill of complaint as covered by the mortgage executed to Lackland and Durkee, and said premises being conveyed subject to the lien of said last-mentioned mortgage.

3. All and singular the branch railroad of the said Pacific Railroad, constructed and operated and extending from a point on the main line at or near Kirkwood; thence to the termination of the said railroad at the Mississippi river at Carondelet or South St. Louis, with its appurtenances, including the depots, stations,

machine-shops, superstructures, and erections on the line of said branch railroad, or at Carondelet aforesaid, together with all the side tracks and switches connected with said branch railroad, and also all the lands acquired and appropriated, or that may be acquired or appropriated for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, or other superstructures and erections on the line of said branch railroad, or at Carondelet aforesaid, which said last-mentioned premises and property were so mortgaged, subject to the lien of a mortgage to Jesse Seligman and James Baker, described in the bill of complaint.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, either in law or in equity, of the said Pacific Railroad, and of the said Vail and Fish, trustees, in and to the above-described premises, and their hereditaments and appurtenances, which the undersigned is, by virtue of the various decrees and orders hereinbefore enumerated, entitled to convey:

To have and to hold the same unto the said James Baker, party of the second part, his heirs and assigns, to his and their only proper use and benefit forever.

In testimony whereof the party of the first part, as master in chancery of said court, has hereunto set his hand and seal the day and year first above written.

[SEAL.] SEYMOUR D. THOMPSON,
Master in Chancery of said Court.

And it further appearing to the court that the said deed is correct in form and substance, and that all the recitals in said deed contained are true and correct; now, therefore, it is ordered and decreed that the said Seymour D. Thompson, master in chancery, do execute, acknowledge, and deliver to the said James Baker, a deed in triplicate, in tenor and form as submitted to the court and hereinbefore set forth, of the said property and franchises, and upon the delivery of said deed the receiver' heretofore appointed by the court in this case are authorized and directed to turn over said property to the said Baker, or his assigns, taking a proper inventory thereof and a receipt therefor.

64 And afterwards, to wit, on the 25th day of October, of said term, the following appears of record in said cause, to wit:

GEORGE E. KETCHUM *et al.*, Complainant,
vs.
PACIFIC RAILROAD *et al.*, Defendants.

Be it remembered that on this 25th day of October, A. D. 1876, appears in open court Seymour D. Thompson, esquire, master in chancery of this court, and acknowledges that he execute' and de-

livers the deed filed in this cause on the 24th day of October, A. D. 1876, to the grantee therein named, under the orders of this court hereinbefore cited, and for the uses and purposes in said deed and in said orders named.

And afterwards, to wit, at the September adjoured term, 1876, of said court, the following proceedings were had in said cause on the 6th day of February, 1877, to wit:

GEORGE E. KETCHUM *et al.*, Complainants,
vs.
THE PACIFIC RAILROAD *et al.*, Defendants.

This day comes the defendant, the Pacific Railroad, by its solicitors, Messrs. Glover & Shepley, and presents to the court a petition for an appeal in this cause to the Supreme Court of the United States, which was presented to the Honorable Samuel F. Miller, associate justice of the Supreme Court, and an order allowing said appeal.

On motion of said solicitors, it is ordered that an appeal be allowed in this cause to the Supreme Court of the United States, and the clerk of this court is directed to make out and certify a full and complete transcript of the record and proceedings in this cause, and transmit the same to said Supreme Court.

And the said solicitors also present and file a bond for an appeal, which said bond was approved by the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States.

The said petition for an appeal, so filed as aforesaid, is in the words and figures following, to wit:

Petition of the Pacific Railroad of Missouri for an Appeal.

Circuit court of the United States, eastern district of Missouri.

GEORGE E. KETCHUM, CORNELIUS K. GARRISON, JAMES SELIGMAN, and Thomas W. Pierce, Complainants,
vs.
THE PACIFIC RAILROAD (OF MISSOURI), THE ATLANTIC AND PACIFIC Railroad Company, Henry F. Vail, James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York, Defendants.

To the honorable judges of the above-entitled court:

The petition of the Pacific Railroad (of Missouri), a corpora-
65 tion incorporated by and under the laws of Missouri, and having its principal place of business in the eastern district of Missouri, respectfully show to your honors:

That the above entitled court has made an order or decree of foreclosure and sale in the above entitled cause at a special or adjourned term thereof, held at St. Louis, in said eastern district of Missouri, on the 6th day of June, 1876; that subsequently, viz., on the 6th, 24th, and 25th days of October, 1876, the said court made other

orders and decrees, confirming the sale ordered by the decree of June 6th, 1876, to James Baker, the solicitor of your petitioner in said cause, and directed a deed of said premises to be given to said Baker, as more fully appears by reference to said orders and decrees made in said case on file in this court, to which reference is here made; that your petitioner is injured and aggrieved by said orders and decrees above described, and desires to take an appeal therefrom to the Supreme Court of the United States; that this petition is filed and this appeal is taken by the Pacific Railroad in conformity with and in obedience to the order of said Pacific Railroad at its adjourned annual meeting, held at St. Louis Dec. 14, 1876, as more fully shown in its corporate proceedings, a copy of which is hereto attached, marked Exhibit A; that said Baker subsequently transferred the premises described in said decree to the Missouri Pacific Railway Company, who now claims to own the same; that said Missouri Pacific Railway Company, on or about the 1st day of November, 1876, mortgaged said premises to the National Trust Company of New York to secure a real or pretended indebtedness of $4,500,000; that said trust company claims a lien upon said premises by reason of said mortgage.

Wherefore your petitioner prays an appeal to the Supreme Court of the United States from the orders and decrees of said court above described, and that a citation may be issued as required by law.

Your petitioner herewith offers to your honors a bond in due form of law, to be approved by your honors.

And your petitioner, as in duty bound, will ever pray, &c.

St. Louis, Jan. 27, 1877.

GLOVER & SHEPLEY,
Att'ys for the Pacific Railroad.

The appeal prayed for is allowed.

SAM. F. MILLER, *Judge.*

FEB'Y 1, 1877.

EXHIBIT A.

Copy of the proceedings of the Pacific Railroad at an adjourned meeting of the stockholders of the Pacific Railroad (of Missouri), held at St. Louis Dec. 14, 1876.

Whereas the charter of the Pacific Railroad and the laws of Missouri authorize the stockholders of said Pacific Railroad, at every annual meeting, to make, alter, or repeal, by a majority of the votes given, any or all by-laws, rules, orders, and regulations made by the directors, and to do and perform every other corporate act authorized by their charter;

And whereas the directors of the Pacific Railroad have allowed their counsel to confess judgment and decree in a foreclosure suit, brought by one George E. Ketchum against said Pacific Railroad and others, under which decree a sale of the railroad owned
66 by said Pacific Railroad has been had, at which sale said railroad is believed to have been purchased by James Baker, Esq.,

the counsel of said Pacific Railroad, adverse to and against the interest of said Pacific Railroad and of its stockholders;

And whereas said directors neglected and refused to defend said foreclosure proceedings, and neglected and refused to take an appeal therefrom to a higher court, or to have the proceedings therein reviewed, and also refused to allow the stockholders to do either or both in the name of the corporation: Therefore,

Resolved, by the stockholders of the Pacific Railroad, in an adjourned annual meeting, assembled at the city of St. Louis, this 14th day of December, 1876, that for the protection of the interest of said Pacific Railroad and its stockholders, Robert L. Cutting, Jr., George R. Fearing, David Rankin, Jr., Peter Marie, and N. A. Cowdrey, or a majority of them, be and they are hereby appointed a special committee, and the agents of said Pacific Railroad and its stockholders, with full power and authority to commence, prosecute, and defend all and each of any suits at law, or in equity, as they or a majority of them shall think for the interest of said Pacific Railroad, or of its stockhold[er]s, should be prosecuted or defended, including the right to take appeals, bring a writ of error, or to make motions in or for a review of any suit heretofore commenced against said Pacific Railroad. To this end the Pacific Railroad hereby authorize and empower said committee, or a majority of them, to employ and to discharge counsel, attorneys, or solicitors; to use the corporate name of said Pacific Railroad for the purposes above named, in such manner and form as they or a majority of them desire, in all places and in all courts, without hinderance or molestation from individual directors, or any other officer of said Pacific Railroad.

And we, the stockholders, hereby revoke any authority heretofore given by the directors of the Pacific Railroad, or by any officers thereof, to use the name of the Pacific Railroad in the suit of George E. Ketchum against the Pacific Railroad and others, now or recently pending in the circuit court of the United States for the eastern district of Missouri, or in any proceedings growing out of said suit, such as an sppeal, a writ of error, a bill of review, or answer or demurrer thereto.

And whereas James Baker, Esq., the present counsel of the Pacific Railroad, has consented to a decree of foreclosure and sale of the railroad of said company, and at the sale of the same, had under said decree, became the purchaser of said premises adverse to the interest of said Pacific Railroad and to the interest of its stockholders: Therefore,

Resolved, That James Baker, Esq., be, and he is hereby, removed from the office of counsel, attorney, or solicitor of said Pacific Railroad, and that all authority for him to act as counsel, attorney, or solicitor of said Pacific Railroad is hereby revoked and withdrawn, and all authority on the part of the directors of this company to appoint counsel, attorneys, or solicitors to act for the company, different from those appointed by the stockholders, is hereby revoked

and withdrawn in all matters and things pertaining to the suit of Ketchum, or any appeal, review, or proceedings growing out of said suit.

Resolved, That Glover and Shepley be, and they are hereby, appointed the counsel, solicitors, and attorneys of the Pacific Railroad, with full power to use the name of the corporation in the prosecution or defense of all suits, appeals, writs of error, bills of review, or other proceedings growing out of the case of George E. Ketchum and others against the Pacific Railroad and others, whether at law or in equity, in which the interests of this company are in-
67 volved, and to employ, under the advice and direction of the special committee appointed by the stockholders, any assistance, or other counsel, solicitors, or attorneys, as they, in connection with said committee, think the interest of the company requires.

Whereas the directors of the Pacific Railroad have neglected and refused to keep open the books of the company for the transfer of the capital stock thereof; and whereas it is desirable and a great convenience to the stockholders of said company to have facilities for the transfer of its capital stock; therefore,

Resolved, That the committee above named, or a majority of them, be, and they are hereby, authorized to appoint, in the name of the company, a proper transfer agent of the company, and to procure proper transfer books and stock ledgers; and they, or a majority of them, are hereby authorized to demand and take possession of all stock ledgers, certificates, and transfer books belonging to said Pacific Railroad wherever the same may be found, and in whosoever's possession the same may be held.

Resolved, That the special committee appointed by the stockholders be, and they are hereby, authorized to fill any vacancies that may occur in their number, and the persons selected by them to fill said vacancies shall have all the power and authority as if appointed at this meeting.

The above resolutions were unanimously adopted at the above-named meeting of the Pacific Railroad, and the foregoing are a correct copy thereof.

Attest: JNO. C. PORTER, *Sec'y.*

And the said bond for appeal is in words and figures following, to wit:

Bond for costs on appeal.

Circuit court of the United States for the eastern district of Missouri.

GEORGE E. KETCHUM *et al.*
vs.
PACIFIC RAILROAD *et al.*

Know all men by these presents, that we, Robert L. Cutting and Peter Maier, both of the city and State of New York, are held and firmly bound unto the clerk of the circuit court of the United States

for the eastern district of Missouri, in trust for the parties to the above-named suit, as their interest may appear, in the sum of one thousand dollars, lawful money of the United States, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally.

The condition of this obligation is such that whereas said circuit court of the United States in the suit above named, depending in said court, in equity, viz., on the 6th day of June, 1876, and on the 6th, 24th, and 25th days of October, 1876, made certain orders and decrees, by which the defendant, the Pacific Railroad, was injured and aggrieved, as more fully set forth in its petition asking for an appeal from said orders and decrees; and the said defendant, the Pacific Railroad, having asked for and obtained an appeal from said order and decrees to the Supreme Court of the United States,
68 and filed a copy thereof in the office of the clerk of said circuit court for the eastern district of Missouri, and a citation to each of the parties to said suit, citing them to appear at the Supreme Court of the United States, to be holden at Washington, on the 2d Monday of October, 1877, having been duly issued and filed;

Now, therefore, if said defendant, the Pacific Railroad, shall prosecute said appeal to effect, and answer all damages and costs if said appeal is not made good, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals, at the city of New York, this 29th day of January, 1877.

R. L. CUTTING. [SEAL.]
PETER MARIE. [SEAL.]

Witness:
WM. H. BOWERS.

Approved by—

SAM. F. MILLER.

FEB'Y 1, 1877.

STATE OF NEW YORK,
City and County of New York, ss:

Personally appeared before the subscribing authority, Robt. L. Cutting and Peter Marie, who are known to me to be the persons who signed the foregoing bond, and each for himself made oath that they are each worth the sum of one thousand dollars and upwards, any and above all claims, debts, and liabilities, and that they are owners of unincumbered real estate in the city of New York worth more than the sum of two thousand dollars, and they severally acknowledged to me that they executed the said bond.

Witness my hand and notarial seal.
[SEAL.]

WILLIAM H. BOWERS,
Notary Public N. Y. Co.

United States of America to George E. Ketchum, Cornelius K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail, and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York, greeting:

You are, each and every one of you, hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, on the second Monday of October, 1877, pursuant to an appeal filed by the Pacific Railroad, in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, wherein you are complainants and defendants and parties in interest, and wherein the Pacific Railroad is also a defendant, and there show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected and speedy justice should not be done the parties to said cause.

SAM. F. MILLER,
Ass. Jus. Sup. Court U. S.

STATE OF NEW YORK,
City & County of New York, ss:

Frederic H. Collum, being duly sworn, says that on the
69 3d day of February, 1877, he personally placed a copy of the within citation in the hands of each of the within-named parties, viz., Cornelius K. Garrison, James Seligman, Henry F. Vail, Darius R. Mangum, president of The National Trust Company of New York, and James D. Fish, and on the 8th day of February, 1877, he placed a copy of the citation in the hands of the defendant, Thomas W. Pierce.

F. H. COLLUM.

Signed and sworn to before me, this 8th day of February, 1877.
E. FRANCIS HYDE,
Notary Public New York City & Co.

Copy of Citation.

United States of America to George E. Ketchum, Cornelius K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York, greeting:

You are, each and every one of you, hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, District of Columbia, on the second Monday of October, A. D. 1877, pursuant to an appeal filed by Pacific Railroad, in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, wherein you are complainants and defendants and parties in interest, and wherein

the Pacific Railroad is also a defendant, and there show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected, and speedy justice should not be done the parties to said cause.

(Signed by) SAM. F. MILLER,
Associate Justice Supreme Court of the United States.

FEBRUARY 1ST, 1877.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

John M. Glover, of lawful age, being duly sworn, on his oath states that he served the within citation upon the within-named James Baker by delivering to him a true copy of the same, in the city of St. Louis, within said district, on the fourth day of April, 1877.

JOHN M. GLOVER.

Sworn to and subscribed before me, a notary public within and for the county of St. Louis and State of Missouri.

FRANKLIN FERRISS,
Notary Public, St. Louis County, Mo.

Copy of Citation.

United States of America to George E. Ketchum, Cornelius K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York, greeting:

You are, each and every one of you, hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, District of Columbia, on
70 the second Monday of October, A. D. 1877, pursuant to an appeal filed by the Pacific Railroad, in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, wherein you are complainants and defendants and parties in interest, and wherein the Pacific Railroad is also a defendant, and there show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected, and speedy justice should not be done the parties to said cause.

(Signed by) SAM. F. MILLER,
Associate Justice Supreme Court of the United States.

FEBRUARY 1ST, 1877.

ST. LOUIS, *Sept.* 29, 1877.

Service of a copy acknowledged this 29th day of September, 1877 A. D.

J. N. LITTON,
Att'y for the Atlantic & Pacific Railroad Co.

Copy of Citation.

United States of America to George E. Ketchum, Cornelius K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York, greeting:

You are, each and every one of you, hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, District of Columbia, on the second Monday of October, A. D. 1877, pursuant to an appeal filed by the Pacific Railroad, in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, wherein you are complainants and defendants and parties in interest, and wherein the Pacific Railroad is also a defendant, and there show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected, and speedy justice should not be done the parties to said cause.

(Signed by) SAM. F. MILLER,
Associate Justice Supreme Court of the United States.

FEBRUARY 1ST, 1877.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

John M. Glover, being duly sworn, on his oath states that he, on the 23d day of March, 1877, served the within citation on the Missouri Pacific Railway Company by leaving with Oliver Garrison, the vice-president thereof, a copy of the within citation and *with* leaving at the business office of said Missouri Pacific Railway Company a copy of said citation, with said Oliver Garrison, the person having the charge thereof, Cornelius K. Garrison, the president of said company, not being found in the district, nor residing therein; and I further state that on the 16th day of February, 1877, I served said citation on James O. Broadhead, the solicitor of said George E. Ketchum, the complainant in said suit, by leaving with him a copy of said citation, all in said district.

JOHN M. GLOVER.

Sworn to and subscribed before me this 23d day of March, 1877. (Qualified Nov. 12, 1874; term expires Nov. 10, 1878.)

[SEAL.] FRANKLIN FERRISS,
Notary Public, St. Louis County, Missouri.

71 *Copy of Citation.*

United States of America to George E. Ketchum, Cornelius K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York, greeting:

You are, each and every one of you, hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, District of Columbia, on the second Monday of October, A. D. 1877, pursuant to an appeal filed by the Pacific Railroad, in the office of the clerk of the circuit court of the United States for the eastern district of Missouri, wherein you are complainants and defendants and parties in interest, and wherein the Pacific Railroad is also a defendant, and there show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected, and speedy justice should not be done the parties to said cause.

(Signed by) SAM. F. MILLER,
Associate Justice Supreme Court of the United States.

FEBRUARY 1ST, 1877.

I acknowledge due service of the within citation.
St. Louis, June 15th, 1877.

GEO. E. KETCHUM,
By JAS. O. BROADHEAD,
Sol'r.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set.:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the above and foregoing is a true and complete transcript of the bill of complaint, subpœna in chancery, marshal's return, and other pleadings and proceedings and record in case No. 703, of George E. Ketchum et al., complainants, against Pacific Railroad et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 28th day of September, A. D. 1877.

[SEAL.] M. M. PRICE, *Clerk.*
By A. P. SELBY, *Deputy.*

(Indorsement on cover:) No. 242. The Pacific Railroad of Missouri, appellant, vs. George E. Ketchum, Cornelius K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, the Missouri Pacific Railway Company, and The National Trust Company of New York. E. Missouri C. C. U. S. Filed 8th October, 1877.

72 Supreme Court of the United States.

PACIFIC RAILROAD (OF MISSOURI,) Appellant,
vs.
MISSOURI PACIFIC RAILWAY COMPANY and others, Appellees.
} October Term, 1877.

Petition for Rule to show Cause.

Your petitioner, the Pacific Railroad (of Missouri,) prays leave to file the annexed petition in the above-entitled cause, and thereupon prays the Court to grant a rule upon the Missouri Pacific Railway Company to show cause, if any they have, why the prayer of said petition should not be granted.

October 15th, 1877.

PACIFIC RAILROAD,
By N. A. COWDREY,
Solicitor.

73 Supreme Court of the United States.

PACIFIC RAILROAD (OF MISSOURI,) Appellant,
vs.
MISSOURI PACIFIC RAILWAY COMPANY and others, Appellees.
} October Term, 1877.

Petition of the Pacific Railroad, Appellant, for the appointment of a Receiver of Rents and Profits pending the Appeal.

To the Supreme Court of the United States:

Your orator, the Pacific Railroad (of Missouri,) the appellant in the above-entitled cause, respectfully shows to this Court:

1st. That the suit in which this appeal is taken—the above entitled cause—was commenced in the circuit court of the United States for the eastern district of Missouri, on a bill of complaint filed by Geo. E. Ketchum, who alleged himself to be the holder of many of said bonds—meaning the bonds secured by the mortgage sought to be foreclosed; said bill was sworn to November 3d, 1875, and filed in said court November 11th, 1875, to foreclose a mortgage claimed to have been made by your petitioner to secure the payment of $4,000,000.

That the original parties to the said foreclosure suit were Geo. E. Ketchum, alleged in the bill to be a citizen of the city and State of New York, complainant, against the Pacific Railroad (your petitioner) and other citizens of the State of Missouri, and Henry F. Vail, James D. Fish and others, alleged in *in* the bill to be citizens of the State of New York.

2d. That subsequently, viz., on the 3d day of April, 1876, on petition alleging that Cornelius K. Garrison, a citizen of
74 said city of New York, held $1,400,000 of said bonds, and

James Seligman, a citizen of the State of New York, held $347,000 of said bonds, and Thos. W. Pierce, alleged to be a citizen of the State of Massachusetts, held $50,000 of said bonds; each of the last above named, viz., C. K. Garrison, James Seligman, and Thos. W. Pierce, were, by order of said circuit court, made parties complainant in said suit.

3d. That on the 19th and 22d days of September, 1876, N. A. Cowdrey, Robert L. Cutting, Jr., Peter Marie, Frank A. Otis, Jacob Cromwell, and George L. Kingsland, all citizens of the city and State of New York, and George R. Fearing, a citizen of Newport, State of Rhode Island, filed a motion and petition alleging themselves to be stockholders in the company composing the corporation of your petitioner, to the amount of 10,000 shares, of the par value of $1,000,000, and that they were the authorized representatives of holders of said stock to the par value of $3,500,000, and praying the said circuit court to be allowed to intervene as defendants in said foreclosure proceedings, for reasons set forth in said petition; to which last-named petition, on file in this court, in the case of Cutting *vs.* The Judges, &c., October term, 1876, the petitioner begs leave to refer, with the same effect as if fully here set forth.

That the prayer of the said Cowdrey and others was refused by the circuit court; that thereupon the said Cowdrey and others applied to this court at its last term for a mandamus to compel said circuit court to allow said intervention and to allow an appeal, which application to this court was refused, and the reasons given therefor, in the case of Cutting and others *vs.* The Judges, &c., 4th Otto, page .

4th. That said mortgage was made to the defendants, Vail and Fish, as trustees, on the 10th day of July, 1875, but the bonds purporting to be secured thereby were made to carry interest from the first day of May, 1875, three months and over anterior to their issue; and the first interest instalment was made to become due November 1st, 1875. The principal sum named in the bonds
75 and in the mortgage was made to become due September 1st, 1872, and the same did not become due at any prior time or date, as appears by the said bill of complaint and the said mortgage.

5th. That the complaint of said foreclosure proceeding only showed $2,300,000 out of said $4,000,000 to have been issued, viz., $2,000,000 for exchange for a like amount of income and improvement bonds and $300,000 negotiated by the company.

6th. That James Baker, Esq., who was then one of the directors of your petitioner's company and a solicitor of this Court and of said circuit court, and the officer of the company upon whom the *subpœna* to answer to the bill of complaint was served, appeared in the name

of your petitioner, and on the 7th day of February, 1876, filed a collusive answer to said bill of complaint admitting all the allegations therein contained, which answer had the effect, or was designed to have the effect, of preventing your petitioner from showing to the court that the mortgage, being foreclosed, was illegal, unauthorized, and void, and to prevent your petitioner from making any just and meritorious defence to the complaint.

7th. That on the 6th day of June, 1876, such proceedings were had in said circuit court as that a decree of foreclosure and sale was entered, by the consent of all the parties to the suit, and without the knowledge of the stockholders, the said James Baker acting as the solicitor of your petitioner; that said decree provided no relief or action against any of the defendants to the suit except your petitioner and the said Vail and Fish, trustees as aforesaid.

8th. That said decree found that certain of the bonds were not then issued, but that they were held in *escrow* to be exchanged for said income and improvement bonds, the continuance of which exchange was authorized by said decree.

9th. That, pursuant to said decree, the premises described in said mortgage, it being the entire property of your petitioner, were sold on the 6th day of September, 1876, by the master, to
76 James Baker, the solicitor of your petitioner, at the sum of $3,000,000; that the said Baker paid the sum bid by him to the extent of $3,948,000 in said third mortgage bonds, to foreclose which the suit was brought, and purporting to be secured by mortgage to Vail and Fish, trustees, and gave the undertaking of C. K. Garrison, one of the complainants, and Charles Chotau, the president of your petitioner's corporation, as security for the further fulfillment of his bid.

10th. That the means for making said bid, and for complying therewith, were furnished to said Baker by said C. K. Garrison; and your petitioner is informed and believes, and therefore avers, that said Garrison, or the said successor company formed by said Garrison, Baker, and others, paid said Baker for his services a large sum, viz., the sum of $25,000.

That said circuit court, refusing to hear the stockholders above named in opposition thereto, confirmed said sale so made to said Baker, notwithstanding said Baker, during all this time, was acting on record as the solicitor of your petitioner, and had actually instigated and procured said mortgage to be made, and said foreclosure suit to be commenced thereon, and had consented to and expedited said decree of foreclosure, and purchased the entire property of your petitioner, and received pay for his services from the parties opposed to your petitioner in said litigation.

11th. That said Garrison and his associates, all owners, or claiming to have been owners, of said third mortgage bonds, at and after

the confirmation of said sale, in connection with said Baker, organized a new corporation called the "*Missouri Pacific Railway Company*," which corporation was and is composed entirely of said third mortgage bondholders. That said Baker then and there assigned said purchase and conveyed said railroad to said Missouri Pacific Railway Company.

That on the 24th day of October, 1876, the said circuit court directed its receiver, who had theretofore been in possession
77 of the same, to turn over said property to said Baker or his assigns; that said Missouri Pacific Railway Company, as the assign of said Baker, thereupon went into the possession of said railroad, and the entire property of your petitioner.

12th. That said Missouri Pacific Railway Company, immediately upon getting possession of said railroad, namely, November 1st, 1876, made, issued, and delivered a mortgage thereon to the National Trust Company of the city of New York, in trust to secure the payment of $4,500,000, of which $4,500,000, $4,000,000 was issued and delivered to the holders of said $4,000,000 third mortgage bonds, and to the holders of said income and improvement bonds, which had just been foreclosed, thus increasing the debt upon the railroad of your petitioner $500,000 more than the old pretended debt.

13th. That said Missouri Pacific Railway Company has little or no *bona fide* capital stock, and no assets except such as are claimed to be owned by your petitioner; and if said appeal is sustained will inure to your petitioner. Upon information and belief, your petitioner avers that, for a large portion of its pretended capital stock, the money pretended to have been paid therefor by said stockholders was at once returned to them for a pretended indebtedness represented by the interest unpaid upon said $4,000,000 of third mortgage bonds, from May 1st, 1875, to November 1st, 1876, say 10½ per cent. on $4,000,000.

14th. That, except so far as said Missouri Pacific Railway Company derives revenue from your petitioner's railroad, it is an insolvent corporation, and has no property assets, or ability to respond to an account for the amount due your petitioner in the event of your petitioner's being successful in the appeal pending in this court.

15th. That the railroad claimed by your petitioner is about 283 miles in length, extending from St. Louis westerly to Kansas City, passing through Jefferson City, the capital of the State, and is one of the trunk lines of the country; and your petitioner avers, upon information and belief, that the earnings of said railroad are very large, amounting in gross to over $3,500,000 per annum, and,
78 after paying operating expenses and taxes, the net earnings amount to from $1,500,000 to $2,000,000 per annum; that

the fixed charges for interest upon mortgages made by your petitioner and prior in lien to the $4,500,000 mortgage made by the Missouri Pacific Railway Company do not exceed $700,000 per annum.

16th. That the interest upon the said $4,500,000, placed upon this railroad by said Missouri Pacific Railway Company, at seven per cent. per annum, has been regularly paid out of earnings derived from your petitioner's property since the mortgage was made, November 1st, 1876, to this time, making the sum of, say $315,000, already diverted from your petitioner to said Missouri Pacific Railway Company; that said last-named company intends and threatens to continue to divert said earnings from your petitioner during the pendency of said appeal, and that said Missouri Pacific Railway Company is wholly unable to respond in damages, or by paying the balance of any account which may be due to your petitioner.

17th. That at the time of the alleged grievances herein contained the control of your petitioner's corporation was in the hands of said Baker and others, who were directors of the same; that said Baker and his associate directors collusively and wrongfully refused to allow the stockholders any voice in the management or defence to said foreclosure proceedings; that they refused to take an appeal from said decree, and refused to allow the stockholders to take an appeal in the name of the corporation, and refused to allow the stockholders in any way or manner to defend said foreclosure proceedings by bill of review or appeal; that it was not until December 14th, 1876, that the stockholders could get any voice in court in defence of said suit; that they immediately availed themselves of their position, and took an appeal from said circuit court to this court, which appeal is now awaiting its turn upon the calendar of this court, (No. 825, October term, 1877;) and your petitioner asks leave to refer to the record in said appeal with the same effect as if it were made a part of this petition.

That by reason of the wrongful, fraudulent, and corrupt action of a majority of the directors of your petitioner's corporation in regard to said foreclosure proceedings, more than sixty days elapsed from the entry of said decree, viz., June 6, 1876, and from the confirmation of the *the* sale made thereunder, viz., October 24th, 1876, before said appeal could be taken; therefore, when the appeal was taken by your petitioner, no supersedeas could be had to stay the Missouri Pacific Railway Company from taking possession of your petitioner's railroad.

That your petitioner attaches a copy of the proceedings of its stockholders hereto, marked Exhibit E, and avers that the same were ratified and re-enacted at the next annual meeting of the stockholders, held in March, 1877.

And that the directors, in March, 1877, elected Robert L. Cutting, Jr., president of your petitioner's company.

18th. Your petitioner avers that said circuit court had no jurisdiction in the premises, because of the citizenship of the complainant and the principal defendants, Vail and Fish, who were necessary defendants in said suit, they all being citizens of the State of New York, and so averred to be in the complaint; that the proceedings of said circuit court in this matter are all void and of no effect.

19th. That said mortgage to Vail and Fish was unauthorized, collusive, and a fraudulent mortgage, corruptly and wrongfully made by the then directors of the company for their personal benefit and to injure your petitioner by foreclosure and sale of its entire property to the holders of said fraudulent third mortgage bonds; that the title of the said Missouri Pacific Railway Company to said mortgaged premises is void, it having been fraudulently obtained through the collusion of the solicitor of record of your petitioner in said foreclosure proceedings.

20th. That if the said circuit court had jurisdiction, the decree entered by it is not responsive to the bill of complaint, and is manifestly erroneous, because, among other reasons, it did not ascertain the amount of debt due, and gave your petitioner no day within which to redeem said mortgaged premises—all of which the petitioner will show when said appeal is heard in this Court.

80 21st. That the decree itself was a collusive and fraudulent decree, consented to by said Baker wrongfully and corruptly, to the destruction of the rights of property of your petitioner, who was at that time his client, and to his, said Baker's, private gain.

22d. Your petitioner avers, upon information and belief, that the said Missouri Pacific Railway Company does not, or has not, in all cases, paid the interest upon the prior mortgages, although the earnings of said railroad are, and were, ample and sufficient, if properly applied, to pay all interest, but that the said C. K. Garrison has pretended to buy the maturing coupons, claiming to hold the same as liens against the property of your petitioner; that it has not paid interest upon a mortgage known as the Carondelet Branch bonds, which are a first lien upon a portion of the railroad in the county of St. Louis, but is purposely leaving the same unpaid, so that by another process of foreclosure your petitioner may be despoiled of that portion of its property known as the Carondelet Branch.

23d. Wherefore your petitioner humbly prays this honorable court to take its case into consideration, and to the end that your petitioner's property may be saved from waste or diversion beyond the help of recovering the same; that you will appoint your receiver with directions to take the general supervision of your petitioner's railroad to the limited extent that the parties now in possession

thereof be directed to operate said railroad, under the general directions of said receiver, and to pay over to said receiver any moneys remaining after paying operating expenses, including taxes, and such renewals and additions as your receiver approves of, and the interest upon the first and second mortgages, and the sinking funds appertaining to either of them; that said Missouri Pacific Railway Company be required to pay the balance to said receiver, or to deposit, subject to the order of said receiver, in some suitable United States depository for public moneys; and that said Missouri Pacific Railway Company be enjoined from paying any interest upon said $4,500,000 of bonds purporting to be secured by mortgage to
81 said National Trust Company pending said appeal, and that it be required to pay over to said receiver all sums heretofore paid on account of interest upon said last-named mortgage bonds.

And that you will grant such further or different relief as to equity appertains.

And your petitioner, as in duty bound, will ever pray.

October 8th, 1877.

PACIFIC RAILROAD,
By N. A. COWDREY,
Solicitor.

STATE OF NEW YORK,
City and County of New York, } *ss:*

On this 11th day of October, 1877, personally appeared before the subscribing authority, Robert L. Cutting, Jr., who made oath that he is the president of the corporation known as the Pacific Railroad (of Missouri;) that he has read the foregoing petition, and knows the allegations therein contained to be true, except where averred upon information and belief, and those he believes to be true.

ROBERT L. CUTTING, JR.

Attest:
[SEAL.] CLARENCE M. HYDE,
Notary Public for the City and County of New York.

82 EXHIBIT E.

Copy of the Proceedings of an adjourned Annual Meeting of the Stockholders of the Pacific Railroad (of Missouri.)

HELD AT ST. LOUIS, DECEMBER 14, 1876.

On motion of Mr. N. A. Cowdrey, the following preamble and resolutions were unanimously adopted:

Whereas the charter of the Pacific Railroad and the laws of Missouri authorize the stockholders of said Pacific Railroad, at every annual meeting, to make, alter, or repeal, by a majority of the votes given, any or all by-laws, rules, orders and regulations made by the

directors, and to do and perform every other corporate act authorized by their charter;

And whereas the directors of the Pacific Railroad have allowed their counsel to confess judgment and decree in a foreclosure suit brought by one George E. Ketchum against said Pacific Railroad and others, under which decree a sale of the railroad owned by said Pacific Railroad has been had; at which sale said railroad is believed to have been purchased by James Baker, Esq., the counsel of said Pacific Railroad, adverse to and against the interest of said Pacific Railroad and of its stockholders;

And whereas said directors neglected and refused to defend said foreclosure proceedings, and neglected and refused to take an appeal therefrom to a higher court, or to have the proceedings therein reviewed; and also refused to allow the stockholders to do either or both in the name of the corporation—

83 *Therefore, resolved*, By the stockholders of the Pacific Railroad, in an adjourned annual meeting, assembled at the city of St. Louis, this 14th day of December, 1876, that for the protection of the interest of said Pacific Railroad and its stockholders, Robert L. Cutting, Jr., George R. Fearing, David Rankin, Jr., Peter Marie, and N. A. Cowdrey, or a majority of them, be, and are hereby, appointed a special committee, and the agents of said Pacific Railroad and its stockholders, with full power and authority to commence, prosecute, and defend all and each of any suits at law, or in equity, as they, or a majority of them, shall think for the interest of said Pacific Railroad, or of its stockholders, should be prosecuted or defended, including the right to take appeals, bring a writ of error, or to make motions in or for a review of any suit heretofore commenced against said Pacific Railroad.

To this end the Pacific Railroad hereby authorize and empower said committee, or a majority of them, to employ and to discharge counsel, attorneys, or solicitors; to use the corporate name of said Pacific Railroad, for the purposes above named, in such manner and form as they or a majority of them desire, in all places and in all courts, without hindrance or molestation from individual directors or any other officer of said Pacific Railroad.

And we, the stockholders, hereby revoke any authority heretofore given by the directors of the Pacific Railroad, or by any officers thereof, to use the name of the Pacific Railroad in the suit of George E. Ketchum against the Pacific Railroad and others, now pending in the circuit court of the United States for the eastern district of Missouri, or in any proceedings growing out of said suit, such as an appeal, a writ of error, a bill of review, or answer or demurrer thereto.

84 And whereas James Baker, Esq., the present counsel of the Pacific Railroad, has consented to a decree of foreclosure and sale of the railroad of said company, and at the sale of the same had under said decree became the purchaser of said premises, adverse to

the interest of said Pacific Railroad and to the interest of its stockholders—

Therefore, resolved, That James Baker, Esq., be, and he is hereby, removed from the office of counsel, attorney, or solicitor of said Pacific Railroad, and that all authority for him to act as counsel, attorney, or solicitor of said Pacific Railroad is hereby revoked and withdrawn; and all authority on the part of the directors of this company to appoint counsel, attorneys, or solicitors, to act for the company, different from those appointed by the stockholders, is hereby revoked and withdrawn in all matters and things pertaining to the suit of Ketchum, or any appeal, review, or proceedings growing out of said suit.

Resolved, That Glover and Shepley be, and they are hereby, appointed the counsel, solicitors, and attorneys of the Pacific Railroad, with full power to use the name of the corporation in the prosecution or defense of all suits, appeals, writs of error, bills of review, or other proceedings growing out of the case of George E. Ketchum and others against the Pacific Railroad and others, whether at law or in equity, in which the interests of this company are involved, and to employ, under the advice and direction of the special committee appointed by the stockholders, any assistance, or other counsel, solicitors, or attorneys, as they, in connection with said committee, think the interest of the company requires.

Resolved, That the special committee appointed by the stockholders be, and they are hereby, authorized to fill any vacancies that may occur in their number; and the persons selected by them to fill said vacancies shall have all the power and authority as if appointed at this meeting.

Endorsed on cover: Sup. Court U. S., 1877, October term. No. 242. The Pacific Railroad, app't, *vs.* George E. Ketchum and al. Petition for rule to show cause, &c. Filed 15th October, 1877.

85 In the Supreme Court of the United States. No. 242. October Term, 1878.

THE PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM, CORNELIUS K. GARRISON, James Seligman, Thomas W. Pierce, the Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, Trustees, James Baker, The Missouri Pacific Railway Co., and The National Trust Co. of New York, Respondents.

Appeal from the Circuit Court of the United States for the eastern district of Missouri.

Motion to dismiss appeal.

JAMES O. BRODHEAD,
Attorney for Respondents.

86 In the Supreme Court of the United States. October Term, 1878.

THE PACIFIC RAILROAD, Appellant, *vs.* GEORGE H. KETCHUM, CORNELIUS K. GARRISON, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, Trustees, James Baker, The Missouri Pacific Railway Co., and The National Trust Co. of New York, Respondents.	No. 242. Appeal from the Circuit Court of the United States for the eastern district of Missouri.

To the honorable the Judges of the Supreme Court of the United States:

Now come the above-named respondents, George E. Ketchum, James Baker, and the "Missouri Pacific Railway Company," by their solicitors, James O. Broadhead and M. C. Day, and state:

87 That the "Pacific Railroad" is a corporation created by the laws of the State of Missouri; that the suit in this case was brought by George E. Ketchum and others to foreclose a mortgage executed by the said Pacific Railroad upon all its property and franchises to secure the payment of certain bonds therein named and described, and being the third mortgage bonds of said company; that all parties in interest having been made parties to this suit, the United States circuit court for the eastern district of Missouri did, during the March term of said court, for the year 1876, to wit, on the 6th day of June, A. D. 1876, and by the consent of all parties to this suit, including the said "Pacific Railroad," render a final decree of foreclosure in said cause, by which Seymour D. Thompson, master in chancery, was ordered to sell all of said property and franchises; and shortly thereafter, to wit, on the 24th day of June, 1876, said court adjourned for the term. That said consent appears in the record in said cause, as follows:

"Now, therefore, the court being fully advised in the premises, and by the consent of all the parties to this suit through their solicitors of record, thereupon and in consideration thereof, it is ordered, adjudged, and decreed as follows, to wit:"

That in pursuance of said decree and order of sale, the said Seymour D. Thompson did sell the same, and at the September term of said court, for the year 1876, made report thereof to said court, which said report of sale was, on the 6th day of October, 1876, in all things confirmed by the judgment of said court, and the said

88 Missouri Pacific Railway Company, another corporation created by the laws of Missouri, is now the owner, by purchase, of said property and franchises so sold by said Thompson.

That on the 22d day of September, 1876, N. A. Cowdrey, Rob-

ert L. Cutting, Jr., Peter Marie, Frank A. Otis, George R. Fearing, and others, stockholders of the said "Pacific Railroad," filed their motion and petition to intervene to set aside the deed of foreclosure and sale on June 6th, 1876, and for liberty to demur, answer, plead or appeal as advised, which said petition was presented on behalf of petitioners and all other stockholders of the said Pacific Railroad, and appears at page 47 of the printed record in this case, which said motion was denied by the said court, see page 54, and from the judgment of said circuit court overruling said petition and motion, the petitioners prayed for an appeal to the Supreme Court of the United States, which said prayer was denied; that thereupon the said petitioners applied to the Supreme Court of the United States for a writ of mandamus to compel the Honorable John F. Dillon and the Honorable Samuel Treat, judges of said court, to grant an appeal; that an alternative writ of mandamus was issued by the Supreme Court, directed to said judges, and made returnable on the —— day of October, A. D. 1876; that upon the return made by said judges to said alternative writ, and after argument thereon, the Supreme Court refused to make a peremptory mandamus upon said judges, and dismissed the said writ, as will appear by reference to the opinion of said court in case *ex parte* Cutting, reported in Vol. 94, U. S. Reports, page 14.

Your petitioners further say, that after the institution of the foreclosure suit of George E. Ketchum *vs.* The Pacific Railroad
89 and others, to wit, on the last Monday of March, A. D. 1876, it being the 27th day of said month, the regular annual meeting of the stockholders of said company was held at the office of the company for the election of directors of said company, at which said meeting Joseph L. Stephens, one of said stockholders, presided as chairman; that on that day directors were chosen, and thereupon the meeting adjourned over until the 29th of said month of March, when the following resolution was passed by said stockholders on the motion of N. A. Cowdrey, viz:

Resolved, That when this meeting adjourns it adjourns to meet at the call of the chairman, on the request of ten thousand shares of stock.

And thereupon said stockholders' meeting adjourned. That thereafter, and during the fall of the year 1876, the said N. A. Cowdrey, claiming to represent ten thousand shares of the stock of said company, addressed a communication to the said Joseph L. Stephens, requesting him, as chairman of said stockholders' meeting, to call a meeting of the said stockholders in pursuance of the above resolution. That thereupon the said Stephens did call a meeting of the said stockholders to be held at the Lindell Hotel, in the city of St. Louis, on the 14th day of December, 1876, by publication in a newspaper to that effect, all of which will appear by reference to the affidavit of the said Joseph L. Stephens, hereto attached and marked Exhibit No. 1.

Your petitioners are not advised as to how many stockholders

were represented at said meeting in person or by proxy, but they say that N. A. Cowdrey, George R. Fearing, Robert L. Cutting, Jr., and David Rankin were present and took part in said meeting, and they say that at this meeting the resolutions were adopted, which are attached to the petition for an appeal in this cause, marked Exhibit A, and which appear in the printed transcript in this case (No. 242) on pages 65, 66, and 67 of said printed transcript.

That amongst said resolutions was one attempting to remove James Baker as attorney for said "Pacific Railroad," and another attempting to appoint Messrs. Glover & Shepley as attorneys and solicitors for said company.

And your petitioners say that this is the only authority claimed, and the only authority, in fact, under which the said Glover & Shepley acted or claimed to act as attorneys for the corporation, the "Pacific Railroad."

But your petitioners say that the stockholders of said company had no power at said meeting held on the 14th of December, A. D. 1876, to manage the affairs of said corporation, nor to appoint attorneys or counselors or solicitors for said corporation, nor to remove the regular attorney of said corporation, appointed by the directors thereof, nor to take an appeal in this case, nor to perform any other corporate act for and in the name of said corporation.

Your petitioners further say that the provisions of the charter of the Pacific Railroad contained in the amendment thereof, passed by the General Assembly of the State of Missouri, and approved on March 1, 1851, in regard to the powers of the board of directors, and of the stockholders, are as follows:

"§ 1. Section fourth of the act entitled An act to incorporate the Pacific Railroad is hereby amended so as to read as follows:

91 § 4. The stockholders of the company shall meet on the last Monday of March in each year, at such place in the State as may be designated by the by-laws of the company, of which at least twenty days' previous notice shall be given in two or more newspapers published in the city of St. Louis, and elsewhere, if the board of directors see fit, and choose by ballot, by a majority of the votes present, to be given in person or by proxy, thirteen directors, all of whom shall be citizens and residents of this State, and shall be owners respectively of at least ten shares in the stock of said company, and qualified to vote for directors at the election at which they shall respectively be chosen; the said directors, and those thereafter to be chosen in pursuance of the provisions of this act, at their first meeting shall choose by ballot one of their own number as president of said company; and the said president and directors shall conduct and manage the affairs and business of said company, until the last Monday in March then next ensuing, and until others are chosen; and may make and establish such by-laws, rules, orders, and regulations, not inconsistent with law, as to them may seem needful.

"§ 2. At every annual meeting the said stockholders shall have power to make, alter, or repeal, by a majority of the votes given, any or all such by-laws, rules, orders, and regulations as aforesaid, and do and perform every other corporate act authorized by their charter. The stockholders may meet at such other times and places as they may be summoned by the president and directors, in such manner and form, and giving such notice as may be prescribed by the by-laws, and the president, at the request, in writing, of any number of stockholders, representing not less than one-seventh in number and interest, shall call a special meeting,
92 giving the like notice, and stating specifically the objects of such meeting; and the objects stated in such notice, and no other, shall be acted upon at such meeting; nor shall any business be transacted at any such special meeting unless a majority of the stock shall be there represented; but the meeting may adjourn from day to day, or until such times as a majority in interest shall be present. So much of section fifteen of said act as is inconsistent with the provisions of this section is hereby repealed."

Your petitioners further say that the day after the annual meeting of the stockholders, to wit, on the 28th day of March, 1876, the new board of directors, consisting of Messrs. Baker, Burr, Edgar, Ferguson, Garrison, Leighton, Leonard, Rowland, Stanard, Stephens, Samuels, Taussig, and Chouteau, was organized by the election of Charles P. Chouteau as president, and J. L. Dearborne as secretary. That at said meeting the following resolution was offered, to wit:

"*Resolved*, That Messrs. Glover & Shepley be authorized to act as the attorneys for this company in all cases now pending in the United States circuit court for the foreclosure of any mortgage upon the property of the company, and also in the proceedings instituted against the company in bankruptcy."

Which resolution was rejected by a vote of eleven to two; all of which will appear by reference to the proceedings of said board, a certified copy of which is hereto attached, marked Exhibit No. 2.

Your petitioners further say that the purchasers of the property and franchises of the Pacific Railroad, at the sale thereof, on the 6th of September, 1876, under the decree of foreclosure afore-
93 said, have long since sold out their interest therein; that the same is now owned by the "Missouri Pacific Railway Co.," and that nearly all the stock of this last-named company has passed by sale into the hands of other parties than those who owned it at the time it first became the purchaser of said property and franchises.

Your petitioners further say that N. A. Cowdrey, Peter Marie, Frank A. Otis, George Fearing, Robert L. Cutting, Jr., and Jacob Cromwell, the same parties who in person or by their proxies held the meeting of stockholders on the 14th of December, A. D. 1876, at which they claimed to act for the Pacific Railroad, and to author-

2. The conclusion is irresistible, from the evidence in this case, that the same parties—representing the same stock—who, as stockholders, held the meeting of December 14th, 1876, and authorized Glover and Shepley to take the appeal in this case in the name of the Pacific Railroad, did make a contract with the bondhold-
97 ers, by which, for a consideration to be given by Garrison, they agreed to withdraw all opposition to the decree of foreclosure, and did withdraw such opposition, and consent to said decree. (See subdivision in fifth and seventh of the amended petition in case pending in superior court of New York, Exhibit No. 3 to this motion.) The consideration may not have been very valuable, because the property sold for only $3,000,000, at a competing sale, and if upon this property the new company to be organized should, as was proposed by Garrison, put a mortgage of $4,500,000 thereon, the stock at that time would be worth very little. But this was the agreement, and they have brought suit, as the testimony shows, against Garrison for $3,600,000, as damages for breach of this contract.

3. Not only did the Pacific Railroad, at the time the decree was rendered, consent to the decree, but after the sale was made, and the property turned over to the purchaser, as late as the 7th of October, 1876, at a formal meeting of the board, these same stockholders, by their attorneys, Glover and Shepley, in a communication, addressed to the board, say :

"You have consented to such decree being entered, and without such consent no such decree could have been entered."

This consent the directors, through their president, Mr. Choteau, do not deny to have given, but they say, in effect, that a defense would have been useless; that the issue of the third mortgage bonds, whose validity had been assailed by these stockholders, was authorized by an almost unanimous vote of the stockholders; that
98 these complaining stockholders had an opportunity to defend, through Mr. Akers, who was admitted as a party to defend the foreclosure for the stockholders, including these very parties, and that they voluntarily withdrew after joining with him in the defense, and that, in the opinion of said board, no defense could be made.

These are briefly the reasons why your petitioners ask the dismissal of this appeal. The position of all the original parties to this suit has changed; the stockholders withdrew their defense, and after the sale, when they appeared again at the next term of the court, and asked the right of appeal as parties in interest, the court refused their prayer, and the Supreme Court sustained the court below. The decree was then supposed to be final, the property bought in at the sale was conveyed to another corporation organized to run the road; new stock was issued; the road was put in repair; large expenditures have been and necessarily must have been made upon the property; the stock of the new company, representing the property acquired at the sale, has passed from the original

owners, and six months after the decree of sale, the final decree in the case, parties who were not parties to the record at the time of the final decree, and who had assented to the final decree, undertake to revive a dead corporation at a meeting called without authority of law, and in its name to upset all that has been done, to the great prejudice and wrong of those who have become the innocent purchasers of the property.

JAS. O. BROADHEAD,
M. C. DAY,
Attorneys for Petitioners.

99 EXHIBIT No. 1.

CITY OF ST. LOUIS, STATE OF MISSOURI.

Personally appeared before me John B. Roeder, a notary public within and for the city of St. Louis aforesaid, Joseph L. Stephens, who having been duly sworn, on his oath says, that on, and long prior to, the last Monday in March, 1876, he was a stockholder in the Pacific Railroad (of Missouri), a corporation duly incorporated under the laws of the State of Missouri; that on said last Monday, it being the 27th day of March, the regular annual meeting of the stockholders of said company was held at its office in the city of St. Louis, Missouri; that he was chosen chairman of said stockholders' meeti , and did preside over the same, and John L. Dearborne was ' osen secretary of said meeting and acted as such; that after the ' nsaction of such business as came before the meeting on that day, on motion of Mr. Cowdrey, said meeting adjourned to meet on the 29th of March, 1876, at ten o'clock a. m. of that day, at the office of the company. That said adjourned meeting was held at the time and place last above mentioned, and after the transaction of such business as came before it, on motion of Mr. N. A. Cowdrey, the following resolution was adopted:

"*Resolved*, That when this meeting adjourns it adjourns to meet at the call of the chairman on the request of ten thousand shares of stock."

That thereafter, on the day of , 1876, it being in the fall of said year, he received a communication from N. A. Cowdrey, from the city of New York, claiming to represent ten
100 thousand shares of the stock of said company, and requesting him to call a meeting of the stockholders thereof, whereupon he made a call for said stockholders' meeting to be held at in the city of St. Louis, Missouri, on the 14th day of December, 1876, which said call, so signed by me, was published in the newspapers at that time; that he was not present at the said stockholders' meeting, and took no part in its proceedings, but is informed and believes that such meeting was held on the said 14th day of December, 1876, at the Lindell Hotel in the said city of St. Louis, Missouri.

(Signed) J. L. STEPHENS.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Sworn to and subscribed before me, this 23d day of December, A. D. 1879. Witness my hand and official seal.

[SEAL.] JOHN B. ROEDER,
Notary Public, St. Louis, Mo.

EXHIBIT No. 2.

ST. LOUIS, *March 28th*, 1876.

Special meeting—organization of new board. Present: Messrs. Baker, Burr, Edgar, Ferguson, Garrison, Leighton, Leonard, Rowland, Stanard, Stephens, Samuels, Taussig, and Chouteau,

Meeting called to order by President Hays. Mr. Ferguson moved that the board proceed to an election of president and secretary.

101 Mr. Leighton offered the following amendment:

"*Resolved*, That the board proceed to the election of a president *pro tem.* and a secretary, and that the election of all other officers be postponed until the further action of the board."

The ayes and noes being called, the amendment was lost by the following vote: Baker, no; Burr, yes; Chouteau, yes; Edgar, no; Ferguson, no; Garrison, no; Leighton, yes; Leonard, yes; Rowland, no; Stanard, yes; Samuel, no; Stephens, yes; Taussig, no.

The motion of Mr. Ferguson then prevailed, and the board proceeded to an election, Messrs. Samuel and Stanard acting *acting* as tellers.

Mr. Ferguson nominated Mr. Chas. P. Chouteau for president. On balloting, the following result was reported by the tellers: Mr. Chouteau, 11 votes; Mr. Leighton, 1 vote; Mr. Garrison, 1 vote. Mr. Chouteau was thereupon declared president of the board for the ensuing year. On motion of Mr. Stanard the election of Mr. Chouteau was made unanimous. Mr. J. L. Dearborn was then nominated for secretary. On balloting, the tellers reported the result as follows: Mr. Dearborn, 12 votes; Mr. Thompson, 1.

Mr. Dearborn was declared secretary for the ensuing year.

The following motion was offered by Mr. Leighton:

"*Resolved*, That Messrs. Glover and Shepley be authorized to act as the attorneys for this company in all cases now pending in the United States circuit court for the foreclosure of any mortgage upon the property of the company, and also in the proceedings instituted against the company in bankruptcy."

The roll being called on the foregoing resolution, the vote was as follows: Baker, no; Burr, no; Chouteau, no; Edgar, no;

102 Ferguson, no; Garrison, no; Leighton, yes; Leonard, yes; Rowland, no; Stanard, no; Stephens, no; Samuel, no; Taussig, no.

On motion of Mr. Garrison, it was resolved that the Farmers'

Loan and Trust Company of New York be made the register and transfer agent of the stock of this company.

On motion, meeting adjourned.

J. L. DEARBORN, *Secretary.*

STATE OF MISSOURI, *City of St. Louis.*

Personally appeared before me, John P. Ellis, a notary public in and for said city and State, William Arnold, who is personally known to me, who on oath says he was a duly elected secretary of the Pacific Railroad by the board of directors, on October 7th, 1876; that he has never resigned or been removed from said office; that the record book of the proceedings of said board of directors has been in his possession ever since the said October 7th, 1876, and that the foregoing is a true and correct transcript from said records.

(Signed) W. ARNOLD.

Subscribed and sworn to before me, this 12th day of December, 1879. JOHN P. ELLIS,

[SEAL.] (Signed) *Notary Public.*

Commission expires May 8, 1881.

103 EXHIBIT No. 3.

N. Y. Superior Court. General Term.

PETER MARIE, FRANK A. OTIS, GEORGE R. FEARING, NELSON A. Cowdrey, Robert L. Cutting, Jr., and Jacob Cromwell

against

CORNELIUS K. GARRISON and JOHN T. DENNY.

At a special term of the superior court of the city of New York, held at the court-house, in the city of New York, on the 9th day of January, in the year one thousand eight hundred and seventy-nine.

Present: Hon. Gilbert M. Speir, judge.

PETER MARIE, FRANK A. OTIS, GEO. R. FEARING, N. A. COWDREY, Robert L. Cutting, Jr., and Jacob Cromwell

against

CORNELIUS K. GARRISON, impleaded with JOHN T. DENNY.

This action having been brought to trial on the issue of law joined herein, after hearing Henry L. Clinton, Esq., of counsel for defendant, Garrison, in support of the demurrer, and William A. Beach, Esq., of counsel for the plaintiffs, in opposition, and on motion of Tremain & Tyler, plaintiffs' attorneys: *Ordered*, That said
104 demurrer be overruled, and that plaintiffs have judgment on the complaint, but with leave to the defendant, Garrison, to interpose and serve an answer herein within twenty days from the date of the service of this order, upon payment of costs; and in case said defendant shall take an appeal to the general term of this court from this order, within five days from the date of the service of this order, all proceedings on the part of the plaintiff upon this

order shall be stayed until the hearing and decision of such appeal and the entry of the order thereon; and the said twenty days allowed to the defendant to answer herein shall not commence to run until the decision of such appeal and the entry and service of the general term thereon.

[A copy.]

THOMAS BOESE, *Clerk.*

Superior Court of the City of New York.

PETER MARIE, FRANK A. OTIS, GEO. R. FEARING, N. A. COWDREY, Robert L. Cutting, Jr., and Jacob Cromwell
against
CORNELIUS K. GARRISON, impleaded with JOHN T. DENNY.

Take notice that the defendant, Cornelius K. Garrison, appeals to the general term of this court from so much of the order
105 of the special term of this court, this day entered in this action, as overrules the demurrer herein, and directs judgment for the plaintiff on the complaint.

New York, January 9, 1879.

W. B. PUTNEY,
Attorney for the Defendant, Cornelius K. Garrison.

To Messrs. Tremain & Tyler, plaintiffs' attorneys.
To Thomas Boese, clerk of said court.

106 *Amended Complaint.*

In the Superior Court of the City of New York.

PETER MARIE, FRANK A. OTIS, GEORGE FEARING, N. A. COWDREY, Robert L. Cutting, Jr., and Jacob Cromwell, Plaintiffs,
against
CORNELIUS K. GARRISON and JOHN T. DENNY, Defendants.

The plaintiffs above-named, by Tremain & Tyler, their attorneys, as and for their amended complaint, complain of the above-named defendants, and thereupon the said plaintiffs state:

First. That the plaintiffs above-named and the defendant, John T. Denny, at the several times hereinafter mentioned, owned and held, either in their own right or in trust for others, with full power of disposition as hereinafter related, thirty-six thousand shares of the capital stock of the Pacific Railroad of Missouri (a cor-
107 poration duly created and organized under and by virtue of the laws of the State of Missouri), of one hundred dollars each, amounting in the aggregate to the sum of ($3,600,000) three millions six hundred thousand dollars, at the par value of said stock.

Second. That the defendant, Garrison, at the same time held, or claimed to hold, a majority of the bonds, viz: $2,200,000 out of an issue of $4,000,000 of bonds issued by said Pacific Railroad, known

as third mortgage bonds; that said bonds were of doubtful validity as a mortgage security, or as a valid obligation against said Pacific Railroad; that it was claimed by the stockholders of said Pacific Railroad that said bonds were collusive and fraudulent, and that the mortgage given to secure the payment of the same, was unauthorized; that the stockholders had never authorized or consented to the mortgage, as is required by the laws of the State of Missouri they should authorize, that the same might be a valid mortgage; that the bonds and mortgage were got up, executed, and delivered collusively and fraudulently, by the then directors of the Pacific Railroad; that, by the terms of the bonds, the principal thereof did not become due until the first day of May, 1895; that said Garrison, and others of said bondholders, claimed that there was then past due two semi-annual coupons for interest upon said bonds; that said defendant expressed great solicitude to get said bonds adjudicated and established as valid; that said railroad at that time was in the hands of directors hostile and averse to the stockholders thereof.

Third. That a collusive suit in the interest of said Garrison, and those associated with him, had been commenced in Novem-
108 ber, 1875, by one George E. Ketchum, who claimed to be a holder of said bonds, to foreclose said mortgage, which suit was then pending in the circuit court of the United States for the eastern district of Missouri; that said Garrison was admitted as a co-complainant in said suit April 3d, 1876, and became the principal and active party in prosecuting the same.

That certain stockholders of said Pacific Railroad had, previous to the making of the agreement hereinafter set up, intervened in said foreclosure suit, and filed an answer and cross-bill alleging collusion and fraud on the part of the directors of said Pacific Railroad in the issue of said bonds, and in the mortgage made to secure the payment thereof, and in the defense or want of defense made in the said foreclosure suit; that some of the plaintiffs above named had filed a petition in said foreclosure suit to be made parties defendant to said suit, and to be allowed to intervene and defend the same in their own behalf and in behalf of all other stockholders.

Fourth. That said Pacific Railroad is about 283 miles in length, extending from St. Louis westerly to Kansas City, passing through Jefferson City, the capital of the State, and is one of the trunk lines of the country; and the plaintiffs aver, upon information and belief, that the earnings of said railroad are very large, amounting in gross to over $3,800,000 per annum, and after paying operating expenses and taxes, the net earnings amount from $1,500,000 to $2,000,000 per annum; that the fixed charges for interest upon mortgages made by said Pacific Railroad, and prior in lien to the said $4,000,-
000 third mortgage, do not exceed $700,000 per annum,
109 leaving as net earnings the sum of $800,000 to $1,300,000, or after paying interest upon the said $4,500,000 of mortgage,

it will leave as net earnings $485,000 to $985,000, which makes the stockholders' interest, the equity of redemption in said railroad, of great value, viz., of the value of $8,000,000.

Fifth. That on or about the 29th day of March, 1876, with a view of compromising said conflicting claims and establishing the validity of said debt of $4,000,000 in the hands of said Garrison, the defendant, Garrison, and others of his associate bondholders, and to prevent the plaintiffs from defending said foreclosure suit, and in consideration of the relinquishment by the plaintiffs of all further opposition to said foreclosure suit, the said Garrison, the defendant, entered into an agreemeent with plaintiffs, evidenced in part by a letter written by him to some of the plaintiffs and the defendant, Denny, a copy of which is hereto attached, marked "A," and the same is made a part of this complaint.

Sixth. The plaintiffs aver that they and the defendant Denny performed and fulfilled all the preliminary obligations in the said agreement contained and agreed to be performed on their part and behalf, and in consequence thereof said defendant Garrison was enabled to procure a judgment and decree of foreclosure on or about the 6th of June, 1876, and a sale of said premises on or about the 6th day of September, 1876, which sale was confirmed by the court in the month of October, 1876, viz., October 6th, which confirmation was modified October 23d, 1876.

Seventh. The plaintiffs say that in the month of June, 1876,
110 at and in the city of New York, the plaintiffs and said Denny, at the special interest and request of the said defendant, Garrison, surrendered the aforesaid letter to said Garrison, and in consideration of such surrender and of the plaintiffs consenting to a modification of the terms of said agreement with said Garrison as contained, in part, in said letter, said Garrison promised to and agreed with the plaintiffs and said Denny, that in the event the said Pacific Railroad (of Missouri) should be sold under the decree of foreclosure in said suit, and in event that he, said Garrison, or any one for him, should become the purchaser thereof, he would forthwith organize a successor company under the laws of the State of Missouri, and would convey or cause to be conveyed thereto all the property of the said Pacific Railroad purchased at the said foreclosure sale under said decree; that the capital of the said successor company should not exceed eight millions of dollars in amount, and that after executing new bonds and a new mortgage in the amount of four millions five hundred thousand dollars, to be issued and used in satisfying and paying off the claims of the said third mortgage bondholders, or of the holders of the income and improvement bonds of said company, he would deliver to the said plaintiffs and said Denny, in return for the amount of stock of the Pacific Railroad, so as aforesaid held by them, thirty-six thousand full paid shares, of the par value of one hundred dollars each, amounting in the aggregate to the sum of $3,600,000, which stock was to be issued by the said successor company, and the said Garrison then

and there promised to and agreed with the plaintiffs and said Denny to purchase the said property at the said foreclosure sale, and assured them of his power and intention of protecting them in their rights of property as stockholders of the said Pacific Railroad.

111 That as the agreement between the plaintiffs and said Denny and the defendant Garrison was executory on the part of said Garrison, the plaintiffs were induced by said Garrison to make the same, because of his, the said Garrison's, representations then and there made to the plaintiffs, in this, that he, the said Garrison, had great wealth and the pecuniary ability to buy said railroad; that he, for himself, and for Russell Sage, held $1,400,000 of said bonds secured under the mortgage which was sought to be foreclosed; that he had sufficient influence with the holders of said bonds to induce them to act with him, and as he acted, and that he would so get them to act, or would pay them in cash the *pro rata* which they would be entitled to receive if the road was sold. By reason of the trust and confidence reposed in said Garrison, and in his representations and promises, the plaintiffs were induced to make said agreement with him. The plaintiffs aver that said Garrison agreed to use his whole wealth, power, and influence to carry into effect the agreement then and there made by him with the plaintiffs.

The plaintiffs aver that without their co-operation and consent, the decree of foreclosure and sale would not then have been made, or made at all until after a trial by the court, the result of which trial was in doubt. Plaintiffs claiming, as above set forth, in relation to the bond and mortgage given to secure the payment of the same.

Eighth. The plaintiffs say that afterwards, and on or about the 6th day of September, 1876, the said Pacific Railroad and the premises and property belonging to said company were sold under the said decree in said suit, which sale was confirmed by the court as above set forth.

112 That at said sale James Baker, the solicitor of said Pacific Railroad in said suit, professed to purchase said mortgaged premises and bid in the same at the sum of $3,000,000, which was at the rate of 75 per cent. upon the full amount of said $4,000,000 mortgage; that the said Baker paid in said third mortgage bonds the sum bid by him to the extent of $3,948,000 of said bonds, which were received *pro rata* for said purchase and gave the undertaking of the defendant, Garrison, and of Charles Chouteau, the president of the said Pacific Railroad, and one D. R. Mangam, for the further fulfillment of his bid.

That the means of making said bid, or for the complying therewith, was mostly furnished to said Baker by the defendant Garrison, and the plaintiffs aver upon information and belief, that the said Garrison, or the successor company formed by the said Garrison and others, paid to the said Baker, for his services, a large sum, viz., $25,000.

That through said Baker the said Garrison became the real pur-

chaser of said mortgaged premises, and, in connection with Baker, proceeded to organize, and did organize, a new successor railroad company, called the Missouri Pacific Railway Company; that said Baker, at the request of and for the use and benefit of the said Garrison, and others of said bondholders, for whom he, said Garrison, acted, conveyed, and assigned his purchase of said premises to said Missouri Pacific Railway Company.

That said Baker was incapacitated from purchasing said railroad at said sale in his own behalf, by reason of his being the solicitor of the plaintiffs' company, the Pacific Railroad, and could only purchase, if at all, as the representative of the holders of said
113 bonds secured under the mortgage which was sought to be foreclosed, and which he appeared in court as solicitor to defend against.

That said Garrison, regardless of his duties and obligations to the plaintiffs, made an agreement with certain of said bondholders, by which he, the said Garrison, assumed the purchase made by said Baker, and subsequently organized a new or successor railroad company, in which organization he then and still does refuse to allow the plaintiffs any interest or benefit.

That the said Garrison was at its incorporation elected or selected himself as the president of said successor company, and has ever since retained said office.

That, although often requested so to do, the said Garrison has refused and does refuse to fulfill his said contract and agreement with the plaintiffs, and to issue, or cause to be issued and delivered, to the plaintiffs thirty-six thousand shares of stock in said company in exchange for the stock of the Pacific Railroad, so as aforesaid held by the plaintiffs.

All of which is to the damage of the plaintiffs in the sum of three million six hundred thousand of dollars, with the interest thereon from said 24th day of October, 1876.

That the defendant, John T. Denny, refuses his consent to be joined as plaintiff, and he is therefore made a party defendant in this action.

Wherefore the plaintiffs demand judgment against the defendant, Garrison, in the sum of three million six hundred thousand of dollars, with interest from October 24th, 1876, and the costs of this action.

THE PLAINTIFFS,
By TREMAIN & TYLER,
Attorneys.

114 CITY AND COUNTY OF NEW YORK, *ss:*

On the 4th day of April, 1878, personally appeared before the subscriber, Peter Marie, Robert L. Cutting, Jr., N. A. Cowdrey, all of whom are plaintiffs in the above entitled cause, and each for himself made oath of the truth of the allegations of the foregoing complaint, of their own knowledge, except where the same are

stated to be alleged upon information and belief, and those allegations they believe to be true.

PETER MARIE,
R. L. CUTTING, JR.,
N. A. COWDREY.

Subscribed and sworn to before me, the day and year above written.

BLOOMFIELD LITTLE,
Notary Public, N. Y. Co.

EXHIBIT A.

Copy of agreement of C. K. Garrison, made March 29th, 1876, attached to complaint of Peter Marie and others *vs.* C. K. Garrison.

To Messrs. N. A. Cowdrey, Robert L. Cutting, Jr., Peter Marie, Frank A. Otis, George R. Fearing, and John T. Denny.

GENTLEMEN: In the event that the Pacific Railroad of Missouri is sold under foreclosure proceedings in the suit of
115 George E. Ketchum, or any foreclosure suit now pending to foreclose the so-called third-mortgage bonds of said Pacific Railroad Company, and in the event that I, or any one for me, becomes the purchaser thereof, then I will agree to sell and convey said railroad as follows:

If, at any time within six months from the date of such purchase by me, you shall organize a successor company under the laws of the State of Missouri, and said company shall pay to me all sums of money (with interest thereon at the rate of seven per cent. per annum from the date of my payment of the same), which I shall have expended in procuring or making good the title to said railroad, and shall further pay to me all sums of money, with interest, at seven per cent., that I may have expended up to the date of the said purchase by said successor company organized by you, in the care, custody, control, and running of said railroad, over and above the income received by me therefor, then I will convey to you, or the said successor company organized by you, the said railroad purchased by me at said foreclosure sale, upon the further condition, however, that said successor company shall immediately, upon the making of the said conveyance to it of said railroad, make and issue its bonds maturing in thirty years from their date, in sums of one thousand dollars each, and to an amount not exceeding four million five hundred thousand dollars, bearing seven per cent. interest, payable semi-annually, in lawful money of the United States, the first installment of interest to be payable May 1, (1877) eighteen hundred and seventy-seven, which said bonds are to be secured by a mortgage or deed of trust on the said railroad and franchises which shall be conveyed by me to said successor company.

116 Of the said $4,500,000 new bonds, two million four hundred and thirty-one thousand dollars ($2,431,000) shall be

delivered to me or such associates as I represent, for the face value, and eighteen months interest of twenty-two hundred (2,200) dollars, third mortgage bonds, which I now hold. The remainder of said new mortgage bonds, viz., two million and sixty-nine thousand dollars ($2,069,000) shall either be given in exchange for a like amount of old third mortgage bonds or outstanding "improvements" and "income bonds," or the same may be sold upon the best available terms for the interest of the stockholders of the said successor company, and the proceeds of the sale applied to the payment of the money that may be required to purchase or pay any outstanding third mortgage bonds not represented by me, or any of the outstanding "income" or "improvement bonds."

It is understood that I may, if I desire, advance or loan the amount necessary to purchase any of the outstanding third mortgage bonds or "income" or "improvement bonds" above mentioned, and to hold the said $2,069,000, or a proportionate part of them, as collateral to secure the advances and interest thereon, at seven per cent., so made by me.

If there are any bonds remaining after accomplishing the above objects, they are to belong to the said successor company.

The said new mortgage, and the bonds issued thereunder, shall be made under the advice of counsel learned in the law, and shall give as ample and full security for the payment of the bonds secured thereby as can be given upon the premises mortgaged or conveyed to the said successor company. And, if it can be law-
117 fully done, in the articles of association of said successor company or otherwise, then the holders of said new mortgage bonds shall be entitled to ten votes at all stockholders' meetings of said successor company for each bond so held by them.

The said successor company shall issue a capital stock to the extent of seven million two hundred thousand dollars ($7,200,000), and you are to transfer the said stock to such of the present stockholders of the Pacific Railroad of Missouri as shall have co-operated with you, and to such as you think have any legal or equitable claims upon you for such stock; in both cases the holders of said Pacific Railroad stock are to transfer the same to the successor company, or to the trustees for their use. Any stock remaining in your hands, after satisfying the claims upon you as above, shall belong to the successor company, and shall by you be transferred to said company as unissued stock.

All expenses of the various litigations shall be paid from the earnings of the railroad, either by the receivers or by the successor company.

My services and expenses shall be paid by the successor company, and your services and expenses shall be paid by the successor company, or you may sell sufficient of the capital stock remaining in your hands which would otherwise be returned to the successor company to repay yourselves for your services and expenses.

I wish it understood that you or either of you, or any other per-

son at your instance or solicitation, may purchase said premises at said foreclosure sale, and I will do nothing to prevent competition or to prevent others from bidding at the sale. I simply agree that if the premises are sold in the said foreclosure suit, and I
118 become the purchaser, then I will sell the same to you, or the successor company organized by you, upon the terms above set forth.

But I expressly stipulate that unless all sums of money which I may have expended in the purchase of said railroad as aforesaid, and all sums which I may have expended for and on account of the same as aforesaid, shall be paid to me by you or by said successor company within six months after the date of my becoming the purchaser of said railroad, then this agreement is to be null and void, and there shall be no right of purchase by you, or by any company organized by you, of the said railroad.

Time is the essence of this agreement, and the payment to me of the said sums of money laid out and expended by me as aforesaid, with interest, within the said period of six months, is a condition precedent to your right, or to that of said successor company, to purchase said railroad from me in the event that I become the purchaser thereof as aforesaid.

ST. LOUIS, MO., *March 29th*, 1876.

C. K. GARRISON.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, William H. Bowers, a notary public of the State of New York, duly commissioned and sworn, and dwelling in said city and county, do hereby certify that on the day of the date hereof I compared the foregoing copy of an original letter with the said original, and found the same to be a true and correct of such original, and the whole of the same.

Witness my hand and notarial seal, this 23d day of June, A. D. 1876.

[L. S.]

WILLIAM H. BOWERS,
Notary Public, N. Y. Co.

119 *Demurrer to Amended Complaint.*

In the Superior Court of the City of New York.

PETER MARIE, FRANK A. OTIS, GEORGE R. FEARING, N. A. COWDREY, Robert L. Cutting, Jr., and Jacob Cromwell, Plaintiffs,
against
CORNELIUS K. GARRISON and JOHN T. DENNY, Defendants.

The defendant, Cornelius K. Garrison, for a demurrer to the amended complaint herein, shows and assigns for grounds of said demurrer as follows, to wit:

First. That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

Second. That it does not appear from the complaint that the plaintiffs, or either of them, have the legal capacity to sue this defendant, inasmuch as there is no averment in said complaint showing whether plaintiffs sue in their own right or in trust for others; and no authority is shown for suing in trust for others, and
120 no specific interest in the matters complained of is shown to exist in the plaintiffs or either of them, so that it does not appear that the plaintiffs have any authority or capacity to sue this defendant, either for themselves or in trust for others.

Third. That there is a misjoinder of parties plaintiff, inasmuch as it does not appear from said complaint that the plaintiffs have any joint cause of action, or any right which authorizes them to unite therein; and said complaint further fails to show any state of facts such as authorize the uniting of the plaintiff, Jacob Cromwell, with the other plaintiffs named in the complaint.

Fourth. That there is a defect of parties plaintiff in this suit, inasmuch as if said complaint is to be construed as averring that persons other than the plaintiffs and the defendant Denny are interested, or beneficiaries in the premises and agreements sued on, and if any joint right of action is shown or averred in said complaint, then such persons others than the plaintiffs are necessary parties plaintiff in this suit, it not appearing that plaintiffs have any right to sue in their behalf, or to represent them in this suit.

Therefore, this defendant prays that said complaint be dismissed, and for his costs.

E. L. ANDREWS,
Att'y for Def't Garrison.
MELVILLE C. DAY,
Of Counsel for Def't Garrison.

121 At a general term of the superior court of the city of New York, held at the court house thereof, in the city of New York, on the 30th day of April, 1879—

Present: Hon. John Sedgwick, Hon. Hooper C. Van Vorst, judges.

PETER MARIE and others, Plaintiffs,
against
CORNELIUS K. GARRISON and another, Defendants.

The appeal by the defendant, Cornelius K. Garrison, from the order of the special term of this court, entered herein on the 9th day of January, 1879, overruling the demurrer of said defendant, Garrison, to the amended complaint of the plaintiffs herein, having come on to be heard before the said judges of this court, at a general term thereof, held on the 10th day of March, 1879, at the county court house, in the city of New York—

And after hearing Henry L. Clinton and Geo. F. Comstock, Esquires, of counsel for the said appellants, and William A. Beach, Esq., of counsel for the respondents, and due deliberation being had:

Now, on motion of W. B. Putney, Esq., attorney for said defendant, Garrison—

It is ordered that the said order of the special term of this court overruling said demurrer be, and the same is hereby, reversed, and that said demurrer be sustained, and that said defendant,
122 Garrison, have judgment thereon, with costs, but with leave to the said plaintiffs to amend their complaint within twenty days from the date of the service of this order, upon payment to the said defendant, or his attorney, of one hundred and ninety-five dollars and thirty cents, his costs and disbursements herein.

Enter. J. S. J.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

William B. Putney, being duly sworn, deposes and says, that a copy of the within order was duly served upon Tremain & Tyler, plaintiffs' attorneys herein, on the first day of May, 1879, as by their admission of service hereon endorsed appears, and that deponent is the attorney for defendant, Garrison, herein, and that no amended complaint has been served upon him, as allowed by the within order.

W. B. PUTNEY.

Sworn to before me, this 10th day of June, 1879.

FRANK P. SLADE,
Notary Public, N. Y. and Kings Co.

(Endorsed.) Due service of a copy of the within order is hereby admitted this day.

Dated May 1st, 1879.

TREMAIN & TYLER,
Plaintiffs' Attorneys.

123 Superior Court of the State of New York.

PETER MARIE and others, Plaintiffs,
against
CORNELIUS K. GARRISON, impleaded with another, Defendants.

This action has been heretofore, at a special term of the superior court of the city of New York, held at the court-house in the city of New York, on the 9th day of January, 1879, brought to trial on the issue of law joined in the same by the demurrer to the plaintiffs' amended complaint, interposed by said defendant, Cornelius K. Garrison; and after hearing Henry L. Clinton, Esq., of counsel for the defendant, Garrison, in support of the demurrer, and William A. Beach, Esq., of counsel for the plaintiffs, in opposition, and on motion of Tremain & Tyler, plaintiffs' attorneys, it having been "ordered that said demurrer be overruled, and that plaintiffs have judgment on the complaint, but with leave to the defendant, Garrison, to interpose and serve an answer herein within twenty days from the date of the service of this order, upon payment of costs,

and in case said defendant shall take an appeal to the general term of this court, from this order, within five days from the date of the service of this order, all proceedings on the part of this plaintiff upon this order shall be stayed until the hearing and decision of such appeal and the entry of the order thereon; and the said
124 twenty days allowed to the defendant to answer herein shall not commence to run until the decision of such appeal and the entry and service of the general term thereon."

And the said defendant, Garrison, having, on the said ninth day of January, 1879, appealed from so much of said order of the special term as overrules the demurrer and directs judgment for the plaintiff on the complaint, and the appeal of the said defendant, Cornelius K. Garrison, from said order having come on to be heard at a general term of this court, held on the tenth day of March, 1879, at the county court-house in the city of New York, and after hearing Mr. Henry L. Clinton and Mr. George F. Comstock, of counsel for said defendant, Garrison, in support of said demurrer, and Mr. William A. Beach, of counsel for said plaintiffs, in opposition, and due deliberations had, and the order and decision of the court upon said appeal having been filed, whereby the said order of the special overruling said demurrer is reversed, and it is ordered that said demurrer be sustained, and that said defendant Garrison have judgment thereon, with costs, but with leave to the said plaintiffs to amend their complaints within twenty days from the service of said order, upon payment to the said defendant or his attorney of one hundred and ninety-five and thirty-hundredths dollars, his costs and disbursements herein; and it appearing that said order and decision of said general term was served upon plaintiffs' attorneys on the first day of May, 1879, and that the plaintiffs have not amended their complaint herein as by said order of the general term allowed—

Now, upon reading and filing said order of the general term and proof of service of the same, and affidavit of William B.
125 Putney that no amended complaint has been served, and upon motion of William B. Putney, attorney for defendant, Cornelius K. Garrison, it is ordered and adjudged that the amended complaint of the plaintiffs herein be, and the same is hereby, dismissed, and that the defendant, Cornelius K. Garrison, have judgment against the plaintiffs for costs and disbursements adjusted at one hundred and ninety-five and thirty-hundredths dollars, as by said order appears.

$195.30. THOMAS BOESE, *Clerk.*

Superior Court of the City of New York.

PETER MARIE and others, Appellants,
against
CORNELIUS K. GARRISON, impleaded with another, Respondent.

SIR: Please take notice that the plaintiffs in the above-entitled action hereby appeal to the court of appeals from the judgment and

determination of the general term of this court herein entered in the office of the clerk of this court, on the 11th day of June, 1879, reversing the order of the special term entered on the 9th day of May, 1879, overruling the demurrer of the defendant Garrison, and dismissing the complaint in this action, with costs, in the sum of one hundred and ninety-five and thirty-hundredths dollars, and for each and every part of said judgment.

Dated New York, June 16, 1879.

Yours, &c., TREMAIN & TYLER,
Plaintiffs' Attorneys, 107 *Broadway, N. Y.*

To Thomas Boese, Clerk N. Y. Superior Court.
W. B. Putney, Esq., Attorney for Defendant Garrison.

126 Superior Court of the City of New York.

PETER MARIE and others, Respondents,
against
CORNELIUS K. GARRISON and another, Appellants.

Clerk's office Superior Court of the city of New York.

I, Thomas Boese, clerk of the superior court of the city of New York, having compared the annexed copy general term judgment roll, notice of appeal to court of appeals and special term order in the above-entitled action, with the original on file in this office, do certify that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof I have hereunto subscribed my name and affixed the seal of the superior court of the city of New York, this twentieth day of December, A. D. 1879.

[SEAL.] THOMAS BOESE, *Clerk.*

127 EXHIBIT No. 4.

In the Supreme Court of the United States. October Term, 1878.

THE PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM, CORNELIUS K. GARRISON, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Co., and The National Trust Co., of New York, Respondents.

No. 242.
Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

I, James Baker, of St. Lous, Missouri, being duly sworn, do depose and say, that before and at the time of the institution of the suit of George E. Ketchum against the Pacific Railroad of Missouri and others, defendants, in the circuit court of the United
128 States for the eastern district of Missouri, November 11, 1875, and during the pendency of said suit, and until after the final decree was entered, I was the attorney of the Pacific Railroad of

company, as alleged, and there has been an attempted sale thereunder of said railroad.

The said decree and sale, and all proceedings in said cause, are utterly null and void, the said court having no jurisdiction of the cause.

132 If said decree and sale are permitted to stand, the said railroad and all our interest therein will be utterly lost.

You have consented to such decree being entered, and without such consent no such decree could have been entered.

And we now demand of you that you protect our interest, and the interest of all the stockholders of said road, by moving, in the name of said railroad, to set aside said decree and the sale made thereunder, because the same is utterly null and void. And in case you shall not so move, in the name of the said railroad, to set aside said decree and sale, we shall hold you, and each of you, personally liable to us, and each of us, for the consequences of allowing such decree to be entered by consent, and of refusing to move said court to set aside said decree and sale for want of jurisdiction in the court. And we do further demand of you, that you authorize us to use the name of said railroad company in making such motion to set aside the decree and sale aforesaid, and to dismiss said bill and proceedings for want of jurisdiction of said court. And if you shall refuse or neglect to so authorize us, we now notify you, and each of you, that we will hold you, and each of you, liable for the consequences thereof.

(Signed) N. E. COWDREY,
ROBERT A. CUTTING, JR.,
PETER MARIE,
FRANK N. OTIS,
JACOB CROMWELL,
GEO. L. KINGSLAND,
GEO. R. FEARING,
By GLOVER & SHEPLEY,
Their Attorneys.

Considerable discussion was entered into on the above communication, each member of the board expressing his

133 opinion. Judge Baker, at great length, reviewed the whole matter in a legal point, and was opposed to any notice being taken of it. Mr. Ferguson then offered the following resolutions, which were read by the secretary, and adopted unanimously:

Resolved, That we now are, and at all times have been willing and ready to do all in our power to protect the interests of the stockholders of the Pacific Railroad as expressed in our answer on file in the United States circuit court.

Resolved, That the president of the company, C. P. Chouteau, Esq., be authorized to take such legal advice and other action in the premises, as to him shall seem proper, after obtaining the informa-

tion as to the law and facts contemplated in the foregoing resolutions.

The president then submitted a draft of a letter which he had prepared in answer to Messrs. Glover & Shepley's communications. Its various points were discussed, and several amendments were made, which resulted in the following letter, which was unanimously approved of, and the secretary was instructed to prepare a full copy of it, to be signed by the president, and to forward the same to Messrs. Glover & Shepley, with a copy of the resolutions passed this day.

ST. LOUIS, *October* 7th, 1876.

Messrs. Glover & Shepley, Attorneys for Stockholders, etc.

GENTLEMEN: In answer to your notice, just received, I beg to inclose copy of resolutions adopted by the board of directors of the Pacific Railroad at a special meeting held this morning, and also a copy of the opinion of the receivers as to the value of the property.

134 The board of directors now are, and have been at all times, unanimous in their desire to do all in their power to protect the interest of the stockholders ofthe company.

Learning that Mr. Cowdrey and other stockholders of the company wished to defend, while we did not approve of their action, we, feeling that we could do them no possible wrong, asked in our answer to the bill of foreclosure that the stockholders might have leave to defend, and such leave was granted by the court, and an answer and cross-bill were filed, by permission of the court, by Mr. Akers, on behalf of himself and all other stockholders who might wish to join.

If Mr. Cowdrey and his associates are really sincere in their desire to defend the foreclosure, why did they refuse to join with Mr. Akers; or, rather, why did they voluntarily withdraw after joining with him in the defense?

We had supposed they had become satisfied that a defense would be useless.

This was our view of the matter, and we now ask you the following questions:

1st. If the receivers of the road, Messrs. Beach and Stephens, who have every facility for knowing the facts, are correct in their views as to the value of the property, can any good result from a re-opening of the litigation?

2d. Are not the directors of the company estopped from assailing the validity of the third mortgage bonds, by the action of the stockholders in July, 1875, which authorized, by an almost unanimous vote, the issuing of those bonds?

135 Again assuring you of the willingness of the directors to do all in their power to protect any real interests of the stockholders,

I am, very respectfully,

(Signed) CHAS. P. CHOUTEAU, *President.*

There being no further business before the board, the meeting was declared adjourned.

WM. ARNOLD, *Secretary.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

Personally appeared before me, John P. Ellis, a notary public in and for said city and State, William Arnold, who is personally known to me, who, on oath, says he was duly elected secretary of the Pacific Railroad by the board of directors on October 7th, 1876; that he has never resigned, or been removed from said office; that the record book of the proceedings of said board of directors has been in his possession ever since the said October 7th, 1876; and that the foregoing is a true and correct transcript from said records.

(Signed) WM. ARNOLD.

STATE OF MISSOURI } ss:
City of St. Louis, }

Subscribed and sworn to before me, this 12th day of December, 1879.

[SEAL] JOHN P. ELLIS,
Notary Public.

Commission expires May 8th, 1881.

136 In Supreme Court of United States.

THE PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM and others, Respondents. } No. 242.

Affidavits and Documents in support of Motion to Dismiss Appeal.

137 In the Supreme Court of the United States. No. 242. October Term, 1878.

THE PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM, CORNELIUS K. Garrison, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, Trustees, James Baker, The Missouri Pacific Railway Co., and The National Trust Co. of New York, Respondents.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

To N. A. COWDREY,
Attorney for the said Appellant.

You are hereby notified that the affidavit of James Baker and of Clinton B. Fisk, and exhibit therein referred to, a copy of which is hereto annexed, will be filed in the Supreme Court, and will be used

in support of the pending motion to dismiss the appeal of which you have heretofore been notified, and which motion will come up for hearing on Monday, January 26, 1880, or sooner, if the said cause is sooner reached, for final hearing on the appeal.

January 5th, 1880.

JAMES O. BROADHEAD,
Attorney for the Respondents.

I admit service upon me this 5th day of January, A. D. 1880, of the above notice and a copy of the affidavits and exhibits therein referred to.

January 5th, 1880.

N. A. COWDREY,
Solicitor for Pacific Railroad.

138 *Supplemental Affidavit of James Baker.*

Supreme Court of the United States. No. 242.

THE PACIFIC RAILROAD *vs.* GEORGE E. KETCHUM, CORNELIUS K. Garrison, Thomas W. Pierce, James Seligman, The Atlantic and Pacific Railroad, Henry E. Vail and James D. Fish, Trustees, James Baker, The Missouri Pacific Railway Co., and The National Trust Co. of New York.	Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

I, James Baker, being duly sworn, do depose and say, that at the request of the counsel for the respondents, I recently made the affidavit in this cause referred to in the motion of the respondents to dismiss the appeal. In that affidavit I stated that at the sale in September, 1876, under the decree, C. K. Garrison and myself, I being then the representative of a majority of the bondholders, became competing and adversary bidders for the property; several bids were made by each of us, and the property was struck off to me as the highest bidder, and the sale was afterwards confirmed without objection, &c. The facts in this respect, more fully stated, are as follows: I filed the answer of the Pacific Railroad in the circuit court under the circumstances stated in my former affidavit.

Neither at the commencement of said foreclosure suit, nor during its pendency, nor at the time of the decree or the sale under the decree, was I the owner of any mortgage bonds or securities upon the Pacific Railroad of any kind, nor in any way adversely interested to the said railroad. I had no employment by the bondholders or the trustees in the mortgage, or by any person for them. Referring to the annexed exhibit for details, I may add that one adverse interest in the contest among the bondholders was represented by Mr. C. K. Garrison, who was understood to own or control about eighteen hun-

dred bonds, amounting to $1,800,000 or thereabouts; the other adverse interest was represented by the bondholders' committee named in the annexed exhibit, and which represented about
139 twenty-one hundred bonds, amounting to about $2,176,000; the two representing substantially the mortgage debt. The exact amounts are stated in the annexed exhibits. Shortly after the sale by the master under the decree, say about two days before such sale, I was asked by the said bondholders' committee to permit the property covered by the mortgage, and which they contemplated purchasing under the decree, to be purchased in my name, as their trustee, to which I consented. At the sale the Garrison interest and the interest represented by the said committee of bondholders became competing and adversary bidders, as stated in my former affidavit. Several bids were made by each. Mr. Andrew Pierce, for the committee of bondholders, finally made a bid of $3,000,000, which was the highest offer, and, when the master inquired who was the purchaser, the answer was James Baker, (the affiant,) and it was so declared. The use of my name was wholly and entirely nominal. I was a dry, naked trustee; and the reason, and only reason, why I was selected as such trustee, as I then understood, and still believe, was that all of the bondholders represented by the said committee had confidence in me.

Further deponent saith not.

JAMES BAKER.

STATE OF NEW YORK,
County of New York, } *ss:*

Subscribed and sworn to before me, this 5th day of January, A. D. 1880. Witness my hand and seal official, hereto set the day above written.

[SEAL.] JAMES J. THORNLEY, JR.,
Notary Public, Kings County, New York.

140 *Affidavit of Clinton B. Fisk.*

In the Supreme Court of the United States. October Term, No. 242.

THE PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM and others, Respondents.

On appeal from the Circuit Court of the United States for the Eastern District of Missouri.

I, Clinton B. Fisk, being duly sworn, do depose and say, that on July 26th, 1876, I was appointed secretary of the meeting of the third mortgage bondholders of the Pacific Railroad (of Missouri,) which mortgage was being then foreclosed in the United States circuit court for the eastern district of Missouri; that I kept a record of the proceedings of the said bondholders and of the bondholders' committee appointed by them; that the exhibit hereto attached is a full, true, and accurate transcript from the record kept

by me; that the original is in my handwriting; that the entries were truly made at the time of the transactions recorded, and are correctly set forth in the annexed exhibit, entitled, "Proceedings pertaining to the foreclosure, purchase, and reorganization of the Pacific Railroad of Missouri, under its third mortgage bonds," and in the circular issued to the said bondholders, and entitled in said exhibit as the "Report of the committee on purchase of the Pacific Railroad (of Missouri,) and organization of successor company;" I was present at all of the said meetings, and know that the matters therein recorded actually took place. The scheme of reorganization as embodied in said circular report was actually consummated; the new company (The Missouri Pacific Railway Company) was organized, and new bonds and stock issued.

I have read the foregoing affidavit of James Baker, and all of the statements therein made are true, as I verily believe. I know of my own knowledge that said Baker was asked to allow his name to be used by the bondholders' committee, in case they should purchase the road under the decree, and he consented. Baker did not own any bonds, and acted merely to accommodate the bondholders' committee. There were several bids made at the sale
141 (at which I was present) by Mr. Garrison, on the one side, and on behalf of the bondholders' committee, on the other, and the property was finally sold to the bondholders' committee. The bid was made by Mr. Andrew Pierce as their representative, but Mr. Baker was announced to the master as the purchaser, and it was so entered; but in this matter Baker was simply the representative and trustee of the bondholders.

Further deponent saith not.

CLINTON B. FISK.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Subscribed and sworn to before me, this 5th day of Jauuary, A. D. 1880. Witness my hand and official seal, hereto set, the day above written.

[SEAL.] JAMES J. THORNLEY, JR.,
Notary Public, Kings County, New York.

The following is the exhibit referred to in the foregoing affidavits of James Baker and Clinton B. Fisk:

142 *Exhibit Referred to in the Preceding Affidavits.*

Proceedings pertaining to foreclosure, purchase, and re-organization of the Pacific Railroad of Missouri, under its third mortgage bonds.

Pursuant to notice, the third mortgage bondholders of the Pacific Railroad (of Missouri) convened at the office of the Atlantic & Pacific Railroad Company, No. 3 Broad Street, New York, on the 26th day of July, 1876.

D. R. Mangam was called to the chair, and W. H. Coffin was chosen secretary. Joseph Seligman stated the object of the meeting, and after discussion, the following resolution was adopted unanimously, on motion of Clinton B. Fisk:

Resolved, That a committee, consisting of Joseph Seligman, D. R. Mangum, T. T. Buckley, Andrew Pierce, and George F. Stone, be appointed, with full power to purchase in behalf of the bondholders who may signify their approval of this resolution, and at such price as they may deem proper, the said Pacific Railroad (of Missouri), and all the property thereto belonging at the sale thereof, to be made under a decree of the circuit court of the United States, on the sixth day of September, 1876, to satisfy said mortgage. And the said committee are hereby authorized to enter into such financial engagements for the completion of such purchase, and to organize a new corporation, in our behalf and to do all things needful for the protection of our interests, under the foreclosure proceedings now in progress.

The meeting adjourned.

W. H. COFFIN,
Secretary

143 COMMITTEE'S PROCEEDINGS.

The committee appointed by the foregoing resolution convened at the office of the Atlantic & Pacific Railroad Company, on July 26th, 1876. There were present: D. R. Mangum, Joseph Seligman, Andrew Pierce, and George F. Stone.

The committee organized by selecting D. R. Mangum, chairman, and Clinton B. Fisk, secretary.

The secretary was instructed to prepare a paper for the signatures of bondholders, pledging their approval of the action of the bondholders' meeting and co-operation with the committee. The committee adjourned to meet on July 27th, at one o'clock p. m.

CLINTON B. FISK,
Secretary.

MEETING JULY 27TH.

The committee convened pursuant to adjournment, with members present as follows: D. R. Mangum, Joseph Seligman, and George F. Stone. The secretary submitted the following paper in compliance with the instructions of previous meeting.

Pacific Railroad (of Missouri.) Re-organization.

We, whese names are hereto subscribed, owners on the third mortgage bonds of the Pacific Railroad (of Missouri), in the sums set opposite each our respective names, do hereby signify our approval of the resolution adopted at a meeting of said third mortgage bondholders, held July 26th, 1876, to wit:

(See resolution in proceedings of bondholders' meeting.)

We hereby agree, in furtherance of the purpose in the foregoing

resolution expressed, to deposit, on receiving request from committee so to do, with the National Trust Company in the city of New York, the amount of bonds set opposite our respective names, or the evidence of ownership of same, subject to the order of said committee for exchange into new securities of the contemplated new corporation.

NEW YORK, *July 27th*, 1876.

The foregoing paper was adopted as a proper form of compliance with the action of the bondholders' meeting, and it was resolved to proceed immediately to the procurement of signatures to the same.

The committee adjourned to meet on Tuesday, August 1st, at one o'clock p. m. CLINTON B. FISK, *Secretary.*

144 MEETING AUGUST 1ST.

The committe convened pursuant to adjournment. The entire committee present. Minutes of former meeting were read and approved.

The chairman reported the following subscriptions to the paper adopted at the last meeting:

D. R. Mangum	$200,000
Andrew Pierce	175,000
Joseph Seligman	323,000
Uriel Crocker	50,000
T. W. Pierce	200,000
G. F. Stone	60,000
Clinton B. Fisk, (16 B. B.)	67,000
Wm. H. Coffin	40,000
J. P. Robinson	10,000
James D. Fish	116,000
Thos. T. Buckley	36,000
Wm. H. Guion	50,000
S. R. Comstock	13,000
C. Littlefield	13,000
Ozias Bailey	26,000
Amos Paul	14,000
F. L. Ridgley	8,000
Charles Thurber	7,000
Mrs. Olivia Bacon	7,000
J. N. Pritchard	5,000
Fred'k Billings	50,000
A. B. Baylis	12,000
J. L. Dearborn	14,000
T. W. Shannon, Att'y	12,000
Chas. F. Tag	23,000
Henry F. Verhuven	41,000
C. Bergen	21,000
Wm. F. Buckley	25,000
	$1,618,000

The committee adjourned to meet at 12 o'clock noon, on August 2d.

CLINTON B. FISK,
Secretary.

145 The committee convened at the office of the Atlantic and Pacific Railroad Company, at No. 25 South Fourth street, St. Louis, on September 5th. All the members present. The minutes of the last meeting were read and approved.

The sale of the Pacific Railroad under decree of foreclosure, on September 6th, and the purchase of the same by some party in behalf of the committee, was the subject of discussion, and a purchase at reasonable price was unanimously agreed upon.

T. T. Buckley tendered his resignation as a member of the committee, but his associates unanimously declined to receive it.

Andrew Peirce was appointed a committee of one to ——— sureties for the two hundred thousand dollars bond, ($200,000,) required by the master in chancery at the sale on the 6th inst.

The committee adjourned to meet at the Lindell Hotel, in room 203, at 8 o'clock p. m., this instant.

CLINTON B. FISK, *Secretary.*

146 LINDELL HOTEL, ST. LOUIS, *Sept. 5th*, 1876.

The committee met pursuant to adjournment. All the members present. After much deliberation it was, on motion of J. Seligman,

Resolved, That the committee of bondholders, through their representative, will bid as high as three millions three hundred thousand dollars ($3,300,000) for the Pacific Railroad and other property thereto belonging, at the sale of the same, under decree of foreclosure, on the sixth inst.

And it was, on motion of G. F. Stone,

Resolved, That the committee, on the part of the bondholders, indemnify the individual sureties who may sign the bond of indemnity required by the master in chancery.

It was found that the subscribers to the bondholders' agreement, under which the committee were appointed, had been augmented since August 1st, as follows:

Subscriptions hitherto recorded	$1,618,000
A. F. Beckman	5,000
Chas. E. Harwood	5,000
Israel Sheldon	20,000
R. H. Lowry	3,000
Oliver Ames	45,000
James F. White	43,000
F. B. Hayes	46,500
Jacob Sleeper	27,000

Isaac Richards' Estate	$31,000
E. N. Robinson	7,000
E. N. Robinson	15,000
W. S. Nichols & Co.	5,000
W. M. Park	10,000
Ford Cooper	20,000
August Crane	20,000
N. Wyckoff	10,000
Austein	1,000
Baker & Morrill	35,000
E. Q. Owen	10,000
D. R. Mangum et al.	200,000
	$2,176,000

The committee adjourned to meet at call of the chair.

CLINTON B. FISKE, *Secretary.*

147 NEW YORK, *Sept.* 21*st*, 1876.

The committee convened pursuant to the call of the chairman, and after receiving the following report from D. R. Mangum, chairman, it was voted that the members of the committee affix their signatures to the same, in these records.

Report of Chairman.

GENTLEMEN: I beg leave to report that all the members of the committee proceeded to St. Louis, to be present at the sale of the Pacific Railroad (of Missouri,) and other property thereto belonging, under decree of foreclosure, on the sixth instant.

The records of the proceedings of the committee prior to the sale of the road show the action of the committee up to that date.

In accordance with the instructions of the committee the property covered by the third mortgage was purchased in behalf of the subscribers to the bondholders' agreement by Andrew Pierce in the name of James Baker for the sum of three millions of dollars.

After the sale, and on the 8th inst., an arrangement was made with Commodore C. K. Garrison to combine the interests represented by himself with those represented by your committee, and that a re-organization of the company should be effected under the direction of Mr. Garrison, and that all the bondholders in the combination should be protected impartially in the new issue of bonds and stocks. The details of the re-organization to be perfected and carried out by Mr. C. K. Garrison, and that he should have the entire control of the re-organization, and the future management of the company and property.

The details of the re-organization, when agreed upon, will be specifically communicated to each subscriber to the bondholders' agreement.

(Signed) D. M. MANGUM,
Chairman.

We, the members of the Committee on Purchase and Re-organization of the Pacific Railroad (of Missouri,) hereby approve of the foregoing report of the chairman, and attest its correctness.

NEW YORK, *September 22d*, 1876.

MANGUM.
PEIRCE.
SELIGMAN.
BUCKLEY.
STONE.

The committee adjourned to meet on call of the chairman.

CLINTON B. FISK,
Secretary.

148 MEETING OCTOBER 14TH, 1876.

The committee met pursuant to call of the chairman. Present: D. R. Mangum, Joseph Seligman and Andrew Peirce. The chairman made verbal report of progress in the confirmation of the sale (by the court) of the Pacific Railroad and the plans for reorganization. After much deliberation it was, on motion of Joseph Seligman—

Resolved, That the chairman of the committee is hereby authorized to subscribe, in behalf of the parties to the bondholders' agreement, for three hundred and ninety-nine thousand dollars of the capital stock of the successor company to the Pacific Railroad (of Missouri,) it being understood that said capital stock shall be eight hundred thousand dollars, and that the said subscription shall be paid at such times as may be designated by the chairman.

The committee then adjourned to meet on call of chairman.

CLINTON B. FISK.
Secretary.

MEETING NOV. 8TH, 1876.

The committee convened at the call of the chairman, at the office of the Atlantic & Pacific Railroad Company. D. R. Mangum, J. Seligman and Andrew Pierce, present.

The chairman made verbal report of the confirmation of the sale of the Missouri Pacific Railroad to James Baker, and the conveyance thereof to the Missouri Pacific Railway Company of the subscription for $395,000 of the $800,000 capital stock of the new company, in behalf of the subscribers to the bondholders' agreement. The secretary was instructed to prepare a complete report of the proceedings of this committee, together with a statement of settlement to be made with each subscriber, and to place said report and statement in the hands of all parties interested forthwith. The committee adjourned.

CLINTON B. FISK,
Secretary.

149 *Report of the Committee on Purchase of the Pacific Railroad of Missouri, and Organization of Successor Company.*

To the third mortgage bondholders of the Pacific Railroad of Missouri:

The undersigned, a committee chosen by the bondholders at a meeting held in the city of New York, on the 26th day of July last, and "appointed with full power to purchase, in behalf of the bondholders, and at such price as they may deem proper, the Pacific Railroad (of Missouri), and all the property thereto belonging, at the sale thereof, to be made under a decree of the circuit court of the United States, on the sixth day of September, 1876, and to enter into financial engagements for the completion of such purchase and to organize a new corporation in behalf of said bondholders, and to do all things needful for the protection of their interests," having performed the duties assigned to them, beg leave to report their proceedings:

Of the four million dollars of third mortgage bonds included in the foreclosure proceedings, your committee received two million one hundred and eight thousand dollars ($2,108,000) from owners thereof, assenting to the terms of the foregoing appointment. We proceeded to St. Louis, and were all present at the sale of said Pacific Railroad, under decree of foreclosure in the city of St. Louis on the sixth day of September last. In accordance with the instructions of the committee, the property covered by the third mortgage was purchased in behalf of the subscribers to the bondholders' agreement by Andrew Peirce, in the name of James Baker, for the sum of THREE MILLIONS OF DOLLARS ($3,000,000). Subsequent to the sale, to wit, on the 8th day of September, an arrangement was entered into with C. K. Garrison to combine the interests in the third mortgage bonds, represented by himself ($1,840,000) with those represented by your committee, and to organize a new company in which the interests of all bondholders represented
150 by Mr. Garrison and your committee should be impartially protected and promoted. Under this plan of co-operation the successor company was duly incorporated under the title of the Missouri Pacific Railway Company, with an authorized capital of three millions of dollars ($3,000,000). The capital was fixed at this sum in compliance with the laws of Missouri, which require in the incorporation of railway companies a subscription of not less than $10,000 per mile of railway included in the organization. Capital stock to the amount of EIGHT HUNDRED THOUSAND DOLLARS ($800,000) only will be created, and issued to the bondholders represented on full payment therefor in cash.

The sale to James Baker was confirmed by the court, and the property and franchises covered by the purchase have been conveyed to the Missouri Pacific Railway Company, of which C. K. Garrison has been chosen president. A new issue of third mortgage bonds has been created, bearing interest at the rate of seven per cent. per

behalf of said Pacific Railroad, was not authorized to give the consent he gave; hence there was no consent on the part of said Pacific Railroad, and the decree and sale, founded upon a pretended consent, is void.

2d. The Pacific Railroad admits that the individual stockholders, N. A. Cowdrey *et al.*, petitioned the Court for liberty to intervene and defend said suits, and that said petition was denied.

And that this Court refused to issue its mandate to the circuit court, commanding it to allow said stockholders to intervene, as shown in—

94 U. S. Repts., p. 14, *Ex parte* Cutting.

3d. It admits that an annual meeting of the stockholders was held March 27th and 29th, at which directors were chosen; but it avers that because of the previous acts and conspiracies of its directors, that said directors had procurred the passage of an act by the State of Missouri, authorizing the directors to so classify themselves that each class might hold office for three years, for which reason, at said annual meeting, the stockholders could only elect four directors out of a board consisting of thirteen, which the stockholders did elect.

156 It also avers that the stockholders at the same meeting, *unanimously* passed a resolution asking the hold over directors to resign, that the stockholders might fill their places with men in whom they had more confidence; that with one single exception they declined to do so, the effect of which action on the part of the delinquent directors was to prevent the stockholders from defending said suit.

It also avers that said annual meeting adjourned to meet at the call of the chairman of the meeting, as shown on page 4 of the petition to dismiss.

And that the chairman did call said adjourned annual meeting of stockholders, which was held on December 14th, 1876.

That the doings of said annual meeting are shown by Exhibit 1 to this answer, and in part on page 65 of the record in this case, to which we beg leave to refer.

That subsequently, at the next annual meeting of the stockholders, held in March, 1877, and at a director's meeting held the following day, all the acts of the stockholders and of the committee therefore appointed, were ratified and adopted by both the stockholders and the directors. The stockholders having at the last-named annual meeting elected four more directors, making eight out of thirteen, were then for the first time enabled to get faithful and judicious action on the part of the board of directors.

Copies of the doings of said meeting of stockholders and directors are hereto attached, marked Exhibit 1.

4th. The *Pacific Railroad* admits it to be true that the old board of directors, on and before and afterwards, refused to employ

157 counsel to defend said foreclosure suit, or to allow the stock-

holders to do so in the name of the corporation, as shown on page 7 of the petition to dismiss.

5th. The Pacific Railroad admits that the purchasers at said foreclosure sale have sold out their interest in the property involved in this suit, as averred in the petition to dismiss, (page 7,) and it avers that said purchasers having so sold out as averred by themselves, they have now no interest in these proceedings, and that they are voluntary interlopers in the business of this Court, and that they should not be heard here, for the reason that they have no interest to protect or to be injured.

6th. The Pacific Railroad admits that certain individual stockholders did make a contract with C. K. Garrison, as set forth in the petition to dismiss, (pp. 29 and 33,) the effect of which was to make good the bonds claimed and believed to have been fraudulent, held and represented by Garrison, known as third mortgage bonds, and to give all the stockholders the same number of shares or equity in the property as they held before validating said bonds.

But it avers that it was no party to said agreement, and that Garrison, as soon as he got said decree and sale which he supposed put his bonds beyond controversy, at once commenced to cheat and defraud the stockholders by refusing to keep his agreement with them, which, when he made, he called upon God, and his (Garrison's) son and executor, in the most solemn manner to witness his good faith and sincere intention to keep and perform said agreement.

That it is true said individual stockholders have brought suit in the city of New York against said Garrison for the damages
158 sustained by them for the breach of his agreement, as shown on pp. 20 and 41 of petition to dismiss.

The Pacific Railroad avers that it was no party to said agreement made with said individual stockholders, and that it is not a party to said suit against Garrison pending in the city of New York, or, rather, in the court of appeals at Albany. The record set forth in said motion to dismiss, (pp. 34 and 41,) shows that Garrison, while admitting that he made said agreement, denies its validity, hence he ought not to be allowed here to claim any advantages under an agreement which he denies in the tribunal where the aggrieved parties are seeking to enforce it.

7th. The Pacific Railroad admits it to be true as set forth in the petition to dismiss, (p. 9,) that the answer to said bill of foreclosure, filed by James Baker, did contain the clause therein set forth, asking, as shown on p. 16 of the record, which clause reads as follows:

"Therefore, this defendant asks this honorable court *to prevent* any of the stockholders aforesaid to become a party defendant to this suit upon a proper showing, and make such defense in the premises as they see proper."

It is probable that in a blind sort of way Baker did intend to get

something on the record which would bind the stockholders. Has he done so? The language used speaks for itself.

The court, as we believe, on his procurement, refused to allow the stockholders, as such, to intervene and to make any defense. The directors of the company refused to allow the stockholders to put in an answer in the corporate name, (p. 9 of motion to dismiss.)

They seemed to do that which they did not do.

They said: "I go, but went not."

159 8th. The Pacific Railroad denies that its stockholders ever, in *in* any manner or form, consented to making the said third mortgage, the one foreclosed, which consent was required by the statutes of Missouri.

And it avers that its then president, Mr. Choteau, was mistaken in that and other points in the letter prepared by Baker, and signed by Choteau, set forth at page 48 of the petition to dismiss. Mr. Choteau had previously been asked by the stockholders to resign, and, at the request of Garrison, had declined to do so.

9th. The Pacific Railroad denies that its stockholders ever withdrew any defense to the suit; if the allusion is to Cutting *et al.*, it is not true; if it is to Akers, this intervention was bogus and fraudulent; he had no stock; he was controlled by Garrison promising to give him future employment at a good salary, which he did do as long as Akers lived. And the Pacific Railroad avers that this agreement by Garrison with Akers was the only agreement made by Garrison in relation to this matter, which he, Garrison, is known to have kept. He cheated the stockholders, the county of St. Louis, the citizens of St. Louis, and some of the counsel employed by him. His agreement with Akers was kept probably from fear. Akers had the reputation of being fearless and desperate, and a dangerous man to cheat.

10th. The Pacific Railroad admits that Garrison has sold out, and avers that his interest as a stockholder was fifty-one per cent. of the stock; that he received $3,000,000 for said fifty-one per cent. of the stock, which is at the rate of $6,000,000 for the capital stock of the company. That the capital stock is now loaded with $250,000 more mortgage debt than when the premises were sold by the circuit court. It admits that the sale made by Garrison was at a fair valuation of the property.

160 And it avers that upon that valuation its stockholders had wrongfully taken from them by the circuit court, $6,000,000.

It denies that the decree was ever supposed to be final; it has exerted itself in every way which counsel have suggested, to get it reversed, from the time it was entered to the present time.

Every person who has bought into the successor R. R. Company has bought with full notice of the pendency of this appeal.

11th. The Pacific Railroad appears now in this Court and denies that it is dead, but avers that it is a living being with great and enormous wrongs to redress; and it fully expects to have its prop-

erty restored to it, to pay *all* of its just debts, and to become a useful corporation to the public in moving persons and property.

It denies that there are any innocent purchasers of its property under said decree or sale, or from any purchaser at said sale.

12th. The Pacific Railroad denies the truth of the allegation of James Baker that he filed the answer of said company by direction of the board of directors, as averred, (page 43 of petition to dismiss,) and asks for permission to take proof on that subject.

It admits that Cowdrey *et al.*, at the annual meeting, represented a very large interest in the stock amounting to over $3,600,000 of the stock of the corporation, and nearly all that voted at said meeting, but avers that the directors, of whom Baker was one, utterly and wholly refused to listen to them, or in any manner to be guided by the wishes and advice of the stockholders.

161 It denies that either it, as a corporation, or the individual stockholders therein ever directed him, the said Baker, to favor and assist the bringing of the said foreclusure suit to a decree in favor of the plaintiffs as soon as under the rules and practice it could be done, or otherwise.

13th. It also denies that Mr. John R. Shepley, as attorney of the stockholders, was present in court both in April and June, and that he urged the court to render a decree as prayed in the bill, and that he was present at his own office at St. Louis, assisting and taking part in the form of the decree to be entered, and that he was present, assenting to the same when it was ordered to be entered.

And avers that what Mr. Shepley did do or did not do is fully shown in his affidavit and that of Mr. Glover, his partner, both hereto attached, marked Exhibit 2, which flatly contradict Mr. Baker.

It avers that Shepley's action in remaining silent on one occasion in court, as shown by his affidavit, was caused by the fraudulent and untruthful conduct of Garrison, who, by his agreement, as set forth in said motion (p. 29), misled and deceived said Shepley, and also said stockholders, at whose instance said Shepley acted; and on this subject the said Pacific Railroad prays that proof may be taken.

14th. The Pacific Railroad denies that there was any substantial competing bids at the master's sale of said premises.

And avers that Baker and Garrison made, in the city of New York, just before the sale, a secret agreement as to how the sale was to be conducted; that Sage was privy to said agreement and a party thereto; that said sale was made as agreed by and be-

162 tween said Garrison and Baker; that Baker was paid the sum of $25,000 or thereabouts for his services in the matter, which were adverse to the interest of said Pacific Railroad, whose attorney and director he then was; that the sale was conducted and bids made according to the previous agreement by Garrison and Baker.

That the bids made by Pierce were collusive with Baker; that Pierce had no ability to buy said road; he was at that very time in great financial embarrassment, and without credit, and was under

a dark cloud for his management and transactions with railroad companies, which he hoped Garrison would relieve him from, or give him material aid in overcoming.

15th. The sale was confirmed because the circuit court harshly, and, we think, unjustly refused to allow the stockholders to become parties to the record that they might be heard on the questions pending before the court. The directors refused to allow the stockholders to appear and object to the confirmation in the name of the corporation, although Baker swears that the stockholders who applied for liberty to use its name represented all the stockholders of the corporation, (p. 43 of motion to dismiss.)

On the above matters of denial and averment the Pacific Railroad asks that proof may be taken.

16th. The Pacific Railroad admits that Baker conveyed the property purchased by him to the new company as alleged, (p. 45 of motion to dismiss.)

And avers that the conveying of it denudes him of all interest in this appeal, and that he has no right to appear here by counsel or otherwise to be heard on any of the matters at issue in this cause.

163 *Reply to Additional Affidavits and Documents on Motion to Dismiss.*

In reply to the additional affidavits and documents to be used by the petitioners to dismiss, the Pacific Railroad replies and says:

17th. That it is not true, as affirmed by Baker in his additional affidavit, (p. 2,) that C. K. Garrison ow[n]ed or controlled $1,800,000 of the bonds, or thereabouts, adverse in interest to the bonds represented by Baker.

And it avers that the interest was joint and mutual—it was all one thing; there was no ability on the part of Baker, or those he pretended to represent to buy the road, without aid from Garrison and Sage, who had to, and did, furnish the money required with which to do so. Baker's pretended bondholders and new clients, except Garrison and Sage, had no money with which to buy the road, which was well known to Baker.

In causing Pierce to bid for him, Baker, he, Baker, relied upon Garrison furnishing the means with which to pay the bid. Baker's or C. B. Fisk's pretended committee made no provision whatever for paying for the road; they had not the ability so to do had they made an effort, but they made no effort, except with Garrison and Sage.

The Pacific Railroad avers that the whole thing was a humbug, and in proof of this, instances the fact that the evening after it was announced that Garrison had bought the road, he was serenaded by what purported in the newspapers to be the merchants of St. Louis, but really by a crowd of boys and idlers gathered together by the sound of a brass band, the funds to pay for which was furnished by Garrison, or by his attorney, F. J. Bowman, Esq. That Garrison addressed the audience so assembled as the merchants of St. Louis,

and promised them to establish a line of steamers from St.
164 Louis to Rio Janeiro, which latter place at that time he dared not visit for fear of arrest on a charge of fraud, which charge he has since settled by the payment of $500,000 and upwards. Garrison got up and paid for his own serenade.

18th. The Pacific Railroad avers that the affidavit of Clinton B. Fisk is practically of the same character—a *humbug*.

That said pretended meeting of bondholders was got up at the instance of Garrison, to make a record to enable him to have an excuse for not keeping his agreement with the individual stockholders—the one set forth on page 29 of motion to dismiss.

That the list of bondholders there given is fictitious, and was never signed by all the men whose names it purports to bear; and many of those who did sign it had no bonds, or no such amount of bonds as is placed opposite to their names.

The committee appointed to buy the road had no financial ability to do so. Mangum and Pierce were bankrupts, or nearly so. Mangum was shortly after, and is now, under indictment for fraud and perjury in the matters of the National Trust Company, and was about that time, arrested for cheating and defrauding his son's widow. Seligman and Stone had not sufficient means with which to buy the road, or any where nearly to do so. Garrison and Sage, by their large ownership of bonds, and their great wealth and command of ready money, were practically the only men who could buy the road.

Mr. Fisk's committee were a farce and humbug, organized by the kind of men and for the purpose above set forth, to give Garrison an excuse for not keeping his agreement, whereby he had agreed to buy the road. The doings of said pretended committee have
165 been allowed to sleep in the hands of its nurse since 1876 to this time, when it is brought forth, as the Pacific Railroad avers, to impose upon this court.

The complaint avers, (Record, p. 7,) that there had been issued about $2,300,000 of said 3d mortgage bonds; the actual amount was $2,200,000; there is no record that that sum had then been increased. The decree, (Record, p. 45,) finds that the income and improvement bonds had not then, June 6th, 1876, been converted into 3d mortgage bonds.

Baker makes affidavit, (p. 2 of supplemental motion,) that C. K. Garrison had $1,800,000 of these bonds, and the decree finds such to be the fact (he actually had over $2,000,000.) Garrison himself says in his letter of compromise, which is attached to the motion to dismiss, that he had or represented $2,200,000.

With but $2,200,000 issued, of which Garrison owned $1,800,000, this leaves, according to the record in this case, $400,000 or $500,000 of 3d mortgage bonds outstanding in scattered lots. Notwithstanding these recorded facts, C. B. Fisk's record makes his committee have $2,176,000 of the 3d mortgage bonds, outside of the $1,800,000 owned by Garrison, which, by this method of testing its truth, is

about $1,700,000 more than they could possibly have; for there is no proof that any greater amount than $2,300,000 were issued at that time, and they could not have been rightfully issued without the record showing it, because the entire books and property, bonds and papers, were in the hands of the receivers appointed by the court.

On all the above matters and things, if they are in any way material to the trial of this cause, the Pacific Railroad asks that proofs may be taken.

PACIFIC RAILROAD,
By N. A. COWDREY,
Solicitor.

166 EXHIBIT 1.

(The record of stockholders' meeting of March, 1877, had not come to hand at the time this document was printed.)

EXHIBIT 1—Continued.

Supreme Court of the United States. October Term, 1879.

PACIFIC RAILROAD (OF MISSOURI,) Appellant,
vs.
GEORGE E. KETCHUM, C. K. GARRISON, *et al.* } No. 242.

Affidavit of John C. Porter, Secretary of Pacific Railroad, of doings of Directors' Meeting held March 26th, 1877.

John C. Porter, being duly sworn, on his oath states that he was duly elected secretary of the board of directors of the Pacific Railroad, appellant herein, and acted as such secretary at a meeting of the board of directors of said company, held at St. Louis on the 26th day of March, 1877, where the following proceedings of the board of directors of the said Pacific Railroad, appellant, were had, viz:

ST. LOUIS, *March* 26th, 1877.

The board of directors of the Pacific Railroad met this day at room 17, Lindell Hotel, St. Louis, Missouri, in accordance with notification, for the purpose of organization and election of officers.

The meeting having been called to order, on motion of Mr. Leighton, Mr. David Rankin, Jr., was unanimously requested to act as chairman. Upon the roll being called, the following members were found to be present: Messrs. W. E. Burr, Rob't. L. Cutting, Jr., Geo. E. Leighton, E. F. Leonard, Peter Marie, D. Rankin, Jr., and Thos. Rankin, Jr.

167 Mr. Leonard informed the board that the term of office of Mr. Chas. P. Chouteau as director and president of this railroad had expired, and moved that the board proceed to an election for president, which motion was carried; and Mr. Marié was appointed teller.

Upon balloting, Mr. Robert L. Cutting, Jr., received six votes,

and was elected president of the board of directors of the Pacific railroad.

Mr. Rankin having announced the result of the election, resigned the chair, and Mr. Cutting presided; a ballot was then had for secretary of the board, resulting in the election (by seven votes) of Mr. John C. Porter to that office.

Communications from Messrs. T. B. Edgar, Joseph L. Stephens, resigning their positions as directors of the Pacific Railroad, were submitted and read. On motion of Mr. Marié, the board accepted said resignations, and proceeded to elect directors to fill the vacancies.

Upon balloting, Mr. N. A. Cowdrey was elected unanimously to fill the vacancy caused by the resignation of Mr. Joseph L. Stephens.

Mr. Cowdrey appeared in his place at the board.

Mr. Adolph D. Paul was then unanimously elected a director of the Pacific Railroad to fill the vacancy caused by the resignation of Mr. T. B. Edgar.

The following resolutions, offered by Mr. Leonard and seconded by Mr. D. Rankin, Jr., were unanimously adopted:

Resolved, That the board of directors approve and affirm the action of Messrs. Glover and Shepley as the counsel of the company, in taking the appeal to the Supreme Court of the United States, in the case of Ketchum *vs.* The Pacific Railroad and others, and in commencing suits in behalf of said company, and assume the defence of the suits brought by John P. Kennedy against N. A. Cowdrey and Wm. Cross, and against Robert L. Cutting and others, as also the suit against George R. Fearing, and the suits of Francis Baby against Peter Marié, and against N. A. Cowdrey and against N. A. Cowdrey and Wm. Cross, and any suits hereafter commenced against any stockholders as such."

168 *Resolved*, That Glover and Shepley be appointed attorneys and counsel of this company."

Mr. Paul appeared at the board.

On motion the board adjourned.

JOHN C. PORTER,
Secretary.

Said affiant states that the above is a true, perfect, and complete copy of the proceedings of said board of directors, held at said place on that day, as recorded by him as said secretary.

JOHN C. PORTER.

Sworn to and subscribed by said John C. Porter before me, at St. Louis, in the eastern district of Missouri, on the 12th day of January, A. D. 1880.

LUCIEN EATON,
Commissionar of the Circuit Court of the United States, for the Eastern District of Missouri.

169 EXHIBIT 2.

In the Supreme Court of the United States. October Term, 1879.

THE PACIFIC RAILROAD OF MISSOURI
vs.
GEORGE E. KETCHUM, CORNELIUS K. GARRISON, THOMAS W. PIERCE, *et al.*
No. 242.

Affidavit of S. T. Glover, Esq.

Samuel T. Glover, attorney-at-law, of the city of St. Louis, in the State of Missouri, on his oath, states that he is a member of the law firm of Glover and Shepley, and was at the time of the facts hereinafter stated.

That his firm appeared in the circuit court as solicitors for and filed the amended motion of N. A. Cowdrey, Robert L. Cutting, Jr., Peter Marié, Frank A. Otis, Jacob Cromwell, and George L. Kingsland, for liberty "to intervene to set aside the decree of June 6th, 1876, in said cause and the sale, and for liberty to demur answer, plead, or appeal as advised," (see printed record in this Court, pp. 47, 48, 49, 50, 51, 52, and 53.) That this affiant was present in the circuit court aforesaid, when the said motion to intervene, &c., was argued; that during the argument James Baker, Esq., stated to the court, among other things, that Glover and Shepley had been present in the court at the rendition of the said decree, and had assented to and approved the same, and they should not attempt to set it aside. This affiant was sitting in a few feet of said Baker, and rose immediately and said to him, in the hearing of the court: Mr. Baker, you are greatly in error when you say that I assented to said decree, for I was not present in the court, nor in the city at the time. This affiant states that said Baker, after a moment's pause, said: "I did not intend to say that Mr. Glover assented to
170 the decree." This affiant then said to Mr. Baker in the hearing of the court: "Mr. Shepley has stated to me that he never did assent to, or approve the said decree, that he was present at the time it was entered, but was silent and passive, submitting to the decree as the act of the court, but giving no other or further consent; and now, as Mr. Shepley is not present, I wish to know from you, Mr. Baker, whether you intend to say that Mr. Shepley said or did anything in approval of that decree beyond what I have stated, as said by him to me. Mr. Baker replied to this that he could not say that Mr. Shepley did. This affiant saith that he has given the substance of his remarks and Mr. Baker's as above, and further saith not.

S. T. GLOVER.

Sworn to and subscribed by Samuel T. Glover before me, at St. Louis, in the eastern district of Missouri, on the 7th day of January, A. D. 1880.

LUCIEN EATON,
Commissioner of the Circuit Court of the United States for the Eastern District of Missouri.

171 EXHIBIT 2—Continued.

PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM *et al.*, Respondents.

No. 242, October Term, 1879, in the Supreme Court of the United States.

Affidavit of John R. Shepley, Esq.

I, John R. Shepley, being duly sworn, on my oath state that I have read what purports to be a printed copy of an affidavit made by James Baker, on the 24th day of December, 1879, and filed in said Supreme Court as "Exhibit No. 4" to a motion filed in said cause to dismiss the appeal therein, in which he speaks of my being present both in April and June, 1879, and urging the court to render a decree as prayed in the bill, and that I was also present at my own office in St. Louis, with Mr. James O. Broadhead, Mr. Frank J. Bowman, and himself assisting and taking part in settling the form of a decree to be entered, and that I agreed to the same as it was afterwards entered, and was present, assenting to the same when it was ordered to be entered. Mr. Baker is entirely mistaken about the matter as to my having assisted in settling the form or assenting to the rendering of the decree. He made some observations of a similar character, as I was informed, in court, on the last of September or first of October, 1876, when I was not present, when he was corrected by my partner, S. T. Glover. The firm of Glover & Shepley had been prior to 1876 employed by Peter Marie, N. A. Cowdrey, and some others in proceedings instituted to prevent a foreclosure of the third mortgage of the Pacific Railroad in the suit brought by George E. Ketchum and others against said railroad company and others for that purpose, and while after that time no opposition was made by said firm,
172 said Glover and Shepley did not consider themselves to be authorized to assent to anything on the part of their clients, and did not assent to said foreclosure or to anything looking to said foreclosure. I recollect that at some time in the spring of that year James Baker, accompanied by Frank J. Bowman, came to my office in St. Louis, on his own motion, and without any agreement or understanding with me, and somewhat to my surprise at the time, as I remember, and Mr. Baker said to to me that he had in his hands what he said was the draft of a decree which he proposed to present to Judge Caldwell. I have no recollection of Mr. Broadhead's accompanying him, but it may have been so. According to my present recollection, I did not read it. This is my strong recollection. Mr. Baker very likely stated to me its general features. I neither assented or dissented, as I had nothing to do in the matter. My recollection is that I was in court in April and in June, 1876, when the matter of a decree in the cause came up, but I certainly never urged the court to render this or any decree in said cause. I have read what my partner, S. T. Glover, has stated in

his affidavit in reference to what Mr. Baker stated in court in reference to my assenting to said decree. He repeated the observation of Mr. Baker to me at that time, and I said to him that Mr. Baker was entirely mistaken in his recollection of the matter; that I was entirely passive in the matter, neither assenting or dissenting. This was the fact. And further said affiant says not.

JOHN R. SHEPLEY.

Sworn to and subscribed by said John R. Shepley before me, at St. Louis, in the eastern district of Missouri, on the seventh day of January, A. D. 1880.

LUCIEN EATON,
Commissioner of the Circuit Court of the United States for the Eastern District of Missouri.

173 EXHIBIT "3."

Agreement of C. K. Garrison with St. Louis County.

To the Hon. C. F. Skultz, James S. Farrar, Jno. D. Finney, committee of the county court of St. Louis county on the Pacific Railroad.

GENTLEMEN: It has been intimated to me that the judges of the county court of St. Louis county, as the representatives of the county, have no desire to delay the proceedings in the suit now pending in the United States circuit court, looking to the foreclosure of the Pacific Railroad under the third mortgage bonds, otherwise than to obtain if you can some settlement of the county's claim against the road for $700,000 and interest, by reason of a loan made to the road by the county, and which still remains unpaid.

As you may perhaps know, I, and parties associated with me, are the owners and holders of the principal portion of these third mortgage bonds, and we are advised by those who are conversant with its affairs that the company will not be able to pay the interest on these bonds, (two instalments of which are now due and remain unpaid,) and that it is inevitable that the road will have to be sold under the third mortgage. Such being the facts, we feel that it is important to the protection of our interests that the road should be sold as soon as practicable, so that it may become the property of a new organization that will be able to put it upon a secure financial basis and bring it to its highest capacity for producing a revenue in such a way as to be mutually advantageous to its owners and to the cities and towns to which it is tributary.

In the event that the road is sold under the third mortgage, I cannot give you any promise that I, or those who are associated with me as the holders of the bonds, will become the pur-
174 chasers, as others may estimate the value of the road higher than we do, and be willing to pay a greater price for it. But, so far as I can foresee, it seems in the highest degree probable that

we will have to become the purchasers of the road in order to protect the investment we have made in these bonds.

And, if we purchase the road, it is our determination to organize a new company, which will own and operate the road with a sufficient capital stock to put it upon a sure and permanent financial basis; and as it is contemplated that the capital stock will be used in operating and developing the road, and not for the payment of the purchase money or our interest in the present bonds, we propose that the new organization will issue a new mortgage on the entire road, bearing interest at the rate of seven per cent., payable semi-annually, securing bonds in sufficient amount to cover the present third mortgage bonds held by us, and the accrued interest thereon.

If the claim of the county on the road is a lien paramount to the third mortgage bonds, then, of course, the sale cannot affect the claim, and the county is abundantly secured. But even if it has no such lien, considering the circumstances under which the debt was contracted, and the benefit that the road received therefrom, the claim is eminently a just one, and it is my feeling that as a matter of policy for retaining for the railroad the good feeling and good offices of the people and the tax-payers of St. Louis county, it will be to the interest of the purchasers to give to the county, if it shall be desired, security of a recognized commercial value in substitution for its present claims.

Entertaining these views, I am willing, and hereby agree, that if I, or my associates, or any one in our behalf, shall become the purchasers of the Pacific Railroad under the present third mortgage, under a sale which shall become duly confirmed to such purchaser, prior to January 1, 1877; and if, further, the county court shall agree by an official action on its part, within thirty days after such confirmation, to take mortgage bonds of the said new corpo-
175 ration in substitution for its present claim and the interest accrued thereon, then we will make the said new mortgage sufficiently large (the amount not to exceed $5,000,000) to cover not only the present third mortgage bonds held by us, but also the county's claim of $700,000 and the interest accrued thereon, and will, upon the request of the county made within the time above designated, deliver to its authorized agents a number of the said new mortgage bonds, which at their par value shall equal the amount of the county's present claim of $700,000 and the accrued interest thereon nt the time of the making of such substitution, and which shall be received by the county in substitution for its present claim.

And I believe that the proposed new bonds will be a good and reliable security for the amount of the county's claim when it is protected by the capital stock of the new organization.

But I will add, that I do not wish you, as the representatives of the county, to do anything to impair any existing rights that it may have on its claim. My only desire is to avoid litigation, which can

prove of no ultimate benefit to the county, but which, by its delays, may prejudice the rights of myself and others who are largely interested in the securities of the road, and who deem it important for our protection that it should as speedily as possible be placed under a permanent management, where its operations can be extended and its credit established.

I am willing that if the decree of sale is made in the suit now pending, that it may be subject to any permanent right or lien that St. Louis county may have on its claim prior to the third mortgage, leaving it with you to determine hereafter, in case I become the purchaser, whether you will rely upon the claim in its present form or take the substituted securities.

But the assurances herein given are predicated and conditional upon the event of the road being sold and confirmed within
176 the time above mentioned, and that the county shall have made the election to take the substituted security within thirty days after the confirmation of the sale. Both these elements are important—the one looking to a speedy sale of the road, and the other to guide the new oranization in determining the amount of the new mortgage to be issued.

You can consider the proposition that I make, and if you see any advantage in it to the county, and if by a withdrawal of proceedings that are merely calculated to delay an immediate sale of the road can be obtained, I think the result will be one of mutual benefit to the tax-payers of the county as well as those who are interested in the future of the Pacific Railroad.

Respectfully, yours,

C. K. GARRISON.

June 1, 1876.

177 *Addition to Brief of Appellant to be Affixed under Head of Fraud, page* 19.

Extract from James Baker's testimony taken at St. Louis in the bankruptcy proceedings instituted by the county of St. Louis in the United States district court *vs.* Pacific Railroad.

The Mr. Litton named was the assistant attorney of the *Pacific Railroad* and occupied the same office with James Baker.

The Littlefield bill was filed against the Atlantic and Pacific Railroad, and the Pacific Railroad. A receiver for both roads was appointed under the Littlefield bill.

Question. You had gone to New York, and were then engaged in consultation with reference to this Littlefield bill?

Answer. Yes, sir.

Q. And you had done so before the bankruptcy proceedings were commenced?

A. Yes, sir.

Q. Was this matter brought up before the board or any member of the board of the Atlantic and Pacific Railroad in New York, before the preparation of the bill was commenced—the Littlefield bill.

A. I did not see the board in session there; I saw several members of the board.

Q. Did you consult with any members of the board before doing so?

A. Yes, sir; I consulted several days, (and the bill was printed before the bankruptcy proceedings were filed.)

Q. With which members of the board did you consult?

A. Well, I saw several of them; they were not altogether in any consultation; I talked with Mr. Pierce, Seligman, and so forth.

Q. Joseph Seligman?

A. Yes, sir.

Did you talk with Clinton B. Fisk?

178 A. Yes—well—very little with Fisk.

Q. You mentioned the matter to him?

A. Yes; I think so.

Q. What day did you reach New York; do you remember?

A. I do not remember; I think it was about the 15th, probably.

Q. The 15th of October?

A. The 15th of October.

Q. You were there some two weeks?

A. Yes, sir; I think so.

Q. You went from here for the purpose of taking action in that matter?

A. I went there in regard to the trouble that had come on them there, without any definite view when I went there.

Q. That was the conclusion you reached after arriving there?

A. Yes, sir.

Q. By whom was the bill of George E. Ketchum, for foreclosure of the Missouri Pacific, prepared?

A. I presume by Mr. Burrill; I was not there when it was done.

Q. Who engaged Mr. Burrill in the preparation of the first bill of Littlefield?

A. I don't know, sir; he was in consultation; he was in consultation when I went there.

Q. With whom?

A. Well, with various parties in interest.

Q. Mr. Pierce?

A. Mr. Pierce, among others.

Q. Mr. Seligman?

A. I don't know whether Mr. Seligman ever saw him or not about it.

Q. He is the same party who prepared the bill for George E. Ketchum, as far as you know?

A. I think so; I don't know, but I think so.

Q. Have you had control of the bill—the Ketchum bill—at any time?

179 A. What do you mean?

Q. Have you had it in your possession or control before it was filed?

A. I don't think I ever saw it; I am not sure; I don't think I ever saw it before it was filed.

Q. Was the bill sent to Omaha?

A. It was; that is, I suppose it was.

Q. Who took it there?

A. I do not know; I expect the mail.

Q. Was it brought from Omaha?

A. I think it was.

Q. Who brought it?

A. I didn't bring it? I didn't see anybody bring it.

Q. Do you know or have you any information as to whether Mr. Litton brought it?

A. I have heard somebody say so.

Q. Did Mr. Litton go there under your instructions to Omaha?

A. Yes, sir; I think he did.

Q. With reference to this bill?

A. Yes, sir.

Q. With instructions to have the bill brought back here?

A. Yes; with the instructions that they were to have no action on it there if they could prevent it.

Q. That matter was under your control?

A. I was one of the defendants in the case.

Q. The matter was under your control, of the presentment or not of that bill, was it not?

A. No, sir, not absolutely; *though I have no doubt they would take my suggestion or advice.*

Q. You considered yourself in control of it, didn't you?

A. I did not.

Q. Who was, if you were not?

A. My understanding is Judge Grant, of Davenport.

Q. Your understanding was that Judge Grant, of Davenport, would act upon your advice and direction in the matter?

180 A. I believed he would; there never was any understanding about it, but I believed he would.

Q. You directed the bill not to be presented there, but to be brought back here?

A. I telegraphed to Mr. Litton to have the bill withdrawn, if he could, and I suppose he got the telegram.

Q. He did it under your direction, and the bill was filed here, was it not?

A. *Yes, sir; I at least sanctioned—I did not do it—I sanctioned it.*

Q. Was the bill prepared by your advice?

A. I don't remember of giving any advice; I may; I don't remember it to that effect.

Q. What was your first knowledge of or concerning the bill?

A. Well, I received telegrams here that there was a bill prepared and would be presented there, *and I believe I had a notice sent out here to be served.*

Q. How did the bill come to St. Louis?

A. That bill?
Q. Yes, sir.
A. I don't know, I am sure, personally.
Q. Did not Mr. Litton bring that bill from Omaha?
A. I think he did; I don't know it.
Q. Didn't he so report to you, as your agent in that matter?
A. No; he never was my agent.
Q. Did you not send him to Omaha; did not he go under your direction?
A. Well, yes; under my advice and direction he went there.
Q. He came back and reported to you that he had brought the bill to St. Louis, didn't he?
A. I think he did; I don't know whether he did or not; I don't remember.
Q. Do you remember whether you gave him any instructions as to what to do with the bill, then?
181 A. I don't remember that I did, but I guess he put it in his drawer.
Q. Under whose instructions was it taken from the drawer, and how it came to be filed in the court; state fully your information on that subject?
A. I have answered that twice.
Q. I haven't understood you and want you to repeat it.
A. Well, I don't know who filed it, personally; I could guess at it; I don't know as I could guess at it either, exactly.
Q. What is your best information on the subject?
A. I think Mr. Porteus took it to Mr. Broadhead, but I am not sure.
Q. Who is Mr. Porteus?
A. *He is one of our attorneys in our office.*
Q. Well, judge, this bill was not taken from the office of the railroad company without your sanction and consent, was it?
A. No, sir; that is, not without my knowledge and consent; that is, I knew of it and consented to it.
Q. And directed it, did you not?
A. I advised it, probably; I know I consented to it.
Q. And directed it, did you not?
A. I advised it, probably; *I know I consented to it.*
Q. Didn't you give the order under which it was done; didn't that bill stay in that drawer until you gave the order?
A. I don't think I did.
Q. Who did give the order if you did not?
A. I expect—I don't know; Mr. Litton, probably; I don't know who did.
Mr. Litton, in all these matters, acted under your advice and instructions, didn't he, in matters of this importance?
A. Well, some things he did and some things he did not; we are not running the same stool factory here; he takes an immense por-

tion of his business to himself and I take other portions to myself; we hardly ever get together in anything.

182 Q. Which of you took the bill to foreclose after the time it was brought from Omaha by Mr. Litton, and placed in the drawer at the railroad office?

A. I will say I don't think I ever had that bill in my hands.

Q. You don't mean to be understood that Mr. Litton would have assumed the responsibility of doing that without your sanction?

A. I have repeated it a half dozen times that I did sanction it; I think about half dozen times.

Q. You did sanction the taking of it from the drawer and filing it?

A. I haven't said a word about taking it from the drawer; I said that I sanctioned the filing of that bill; I didn't speak of how we got it out of the drawer, or anything of the kind.

Q. Well, then, that bill, judge, was really filed in this court by your procurement, wasn't it?

A. By my consent, yes, sir; by my consent, certainly.

Q. And that is a bill to foreclose the Pacific Railroad under the third-mortgage bonds, is it?

A. It is, as I understand it.

Q. For both of these bills?

A. I presume in both; certainly in one.

Q. I am referring to the Littlefield bill and the Ketchum bill (to foreclose on third mortgage)?

A. Yes, sir; I have no doubt but what they did coincide and sanction it; I have appeared for them and never resisted and don't expect to.

183 Supreme Court of the United States. October Term, 1879.

PACIFIC RAILROAD (OF MISSOURI) *against* GEORGE E. KETCHUM *et al.* } No. 242.

DISTRICT OF COLUMBIA, *City of Washington,* } *ss:*

N. A. Cowdrey, being duly sworn, on oath, says:

That Exhibit 3, hereto attached, is a true copy of the proposition made by C. K. Garrison and accepted by the county of St. Louis in pursuance whereof the county of St. Louis withdrew, on June 6, 1876, all opposition as theretofore made by said county to a decree of foreclosure of the Pacific Railroad, now on appeal in this Court, as deponent is informed by the agents and attorneys of the county of St. Louis, and that C. K. Garrison informed deponent that he had made an agreement with said city and county to withdraw further opposition to a decree being entered.

That said proposition and agreement, as set forth in said exhibit, was presented on or about June 3, 1876, in writing, over the signature of said Garrison, to the judges of the county court of St. Louis

county as an inducement to said county to withdraw their intervention in this suit, as a party claiming interest in the stock of
184 said Pacific Railroad, by which said foreclosure was resisted, and the said agreement then made by the said Garrison was the cause of the withdrawal of said intervention and opposition by the attorney of the county on the 6th day of June following, and enabled said complainants to get said decree entered.

That said Garrison is now appearing in this Court to get this Court to aid him in refusing to carry into effect his agreement with said county. (See Record in No. 162.)

And I further state that the annexed extracts from James Baker's testimony was taken by me from a certified copy of his examination in the case of St. Louis County *vs.* Pacific Railroad in the United States district court, in bankruptcy.

Further deponent saith not.

N. A. COWDREY.

Subscribed and sworn to before me, this 20th day of January, A. D. 1880.

[SEAL.] CHAS. B. BEALL,
Notary Public.

185 Supreme Court of the United States. October Term, 1879.

THE PACIFIC RAILROAD (OF MISSOURI,) Appellant,
vs.
GEORGE E. KETCHUM, *et al.*, Appellees. } No. 242.

Motion to Reverse Decree, with Instructions that Appellant may Redeem Property upon Paying the Amount Due on Mortgage Debt.

Now comes the appellant and moves this honorable Court to reverse the decree entered in the circuit court, and to remand the cause to the circuit court with instructions.

1st. To find the amount of debt due from the appellant.

2d. To deduct therefrom the net earnings of the mortgaged premises, after paying interest upon the prior incumbrances upon said premises, since October 25th, 1876, the day the master's deed to the premises was given.

3d. To direct the appellant—within a reasonable time to be fixed by the circuit court—to pay a full amount of debt so found to be due by the court—to redeem the mortgaged premises; to pay the same to the parties entitled to receive the same, or to said
186 circuit court; and that upon this being done that the parties in possession of the premises be directed to hand over the possession thereof to the appellant.

4th. To give such further, other, or different instructions to the circuit court "*as the justice of the case requires*," and as this Court is authorized to give by section 701 of the Revised Statutes of the United States.

The appellant submits in support of said motion the annexed affidavits, petitions, and points.

March 29th, 1880.

PACIFIC RAILROAD,
By its Solicitor, N. A. COWDREY.

187 *Petition of the Pacific Railroad.*

The Pacific Railroad, the appellant in the above-entitled cause, humbly petitions this honorable Court to reverse the decree entered in the circuit court against the appellant, and to allow it to pay the entire mortgage debt, found by the court to be due the complainants, and to redeem and receive back its property taken from it by said circuit court.

It avers that it was advised, and so believes the law to be, until this Court decided differently, that the circuit court had no jurisdiction in this cause, because of the citizenship of the parties; that the act under which jurisdiction was obtained, was passed in 1875, and that this suit was commenced November 11th, 1875, it was one of the first suits commenced, where a judicial construction of that statute was involved; that to the time this appeal was taken there had been no judicial interpretation of said act of 1875, to guide suitors as to their rights or liabilities.

That the appellant was innocently mistaken as to what the law was, which mistake, it appears by the published opinion of this Court, was shared in by a number of the members of this Court.

The appellant avers that it was further advised that its solicitor could not buy its property adverse to its interest, and so believed the law to be until this Court held differently.

Wherefore, because of said mistakes of law, and to the end that such proceedings may be had in this cause, "*as the justice of the case requires*," it prays this honorable Court to reverse the decree appealed from, and to remand the cause with instructions to ascertain the amount of debt due to the complainants, and to limit a reasonable time within which the petitioner—appellant in this cause, may pay said debt, and have its property restored to it, and to the circuit court, with such other instructions as the 701st section of the Revised Statutes authorizes and requires.

188 The appellant pledges itself to this honorable Court that it has the ability and will pay whatever debt said Court, or the circuit court finds, to be due on said mortgage or by said decree.

PACIFIC RAILROAD,
By R. L. CUTTING, JR.,
Pres't.
N. A. COWDREY,
Slicitor.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

R. L. Cutting, Jr., being duly sworn, deposes and says: That he is the president of the Pacific Railroad, appellant in the above entitled cause.

That said corporation is composed of over two hundred shareholders. That said shareholders were surprised by the entry of the decree appealed from, and by the consent thereto given by the solicitor of the corporation.

That affiant believes the corporation are both able and willing to pay whatever amount of debt the Court finds to be due the complainants, and that it would have done so had the decree been in the ordinary form limiting a time within which said debt might have been paid.

That his means of information are derived from consultations with some of the larger shareholders, who all concur with him in the desire and intention of the corporation to pay its debts, and particularly the debt to the complainant.

That he is informed and believes that the appellant owes no other debt except mortgage bonds not due for some years, and on which the interest is fully paid, and except the debt due to the county of St. Louis, which latter debt the appellant intends to pay, and which the deponent has no reason to think the appellant will have any difficulty in arranging with the county to its full satisfaction.

189 That affiant humbly prays this Court to grant the prayer of the petition of the appellant.

And pledges himself to use all reasonable exertions to pay said debts.

R. L. CUTTING, JR.

Sworn to before me, on this —— day of April, 1880.

[SEAL.] W. D. SEARLS,
Notary Public, N. Y. Co.

Affidavit of N. A. Cowdrey.

N. A. Cowdrey, being duly sworn, says that he is the solicitor of the appellant, and is personally acquainted with a large number of its shareholders; that he believes that said appellant is able and willing to pay all its debts, and particularly to pay the debt of the complainant in this case, and to redeem its property.

That he has no reasonable doubt, but that in the event of this Court directing the amount of debt due to be found by the circuit court, and a reasonable time being limited within which the same must be paid, that the appellant will pay the debt in full.

That the affiant will use all reasonable efforts to that end.

That he is informed and believes that appellant owes no other debts, except its bonded debt, not due for some years, and on which interest is promptly paid, and except a debt due to the county of St. Louis, which the affiant has reason to believe can be arranged to the entire satisfaction of the county of St. Louis.

N. A. COWDREY.

Sworn to before me, this —— day of April, 1880.

[SEAL.] W. D. SEARLS,
Notary Public, N. Y. Co.

190 *Points.*

The appellant believes that this honorable Court desires in this, and in all other cases which come before it, to make such orders "*as the justice of the case requires*," and repectfully submits to the Court that if the creditor is paid the full amount due him and the property is restored to the debtor, that *the justice of the case* is satisfied, the creditor gets all he is entitled to receive.

The debtor is willing the creditor should get full satisfaction to the extent of his getting the full payment of all that is due him.

This is a case which appeals strongly to the conscience of this Court, one that the language of the statute, 701st section Revised Statutes was expressly adopted to relieve the hardships of the appellant in this cause.

It is a case of the *greatest judicial robbery* of modern times, perpetrated under the forms of law by collusion with the appellant's solicitor and some of its directors.

The debtor was far from being insolvent; it was prosperous; its shares were selling at near par; they were held as an investment by retired people not in active business; the company was a lender of money; it actually had a loan of a large amount on which it held $750,000 of the Atlantic & Pacific Railroad Company's bonds as collateral security in its safe at the time the receivers were appointed; it owns these bonds now; they have been wrongfully taken from its safe by Mr. Jay Gould, who now claims to own them.

The case is one of great hardship; the debtor is called upon, or forced to pay a debt of $4,000,000, for which it never received one cent of benefit, and to give up in addition *all* its property, now worth over $7,000,000.

The appellant respectfully asks this honorable Court to take its case into consideration, and to see if it cannot, if it is not its duty, to prevent the consummation of this great *judicial robbery.*

The debtor is willing to pay the mortgage debt with interest, as the same shall be found due by the circuit court, and upon doing so, ask to have its property restored to it.

191 It urges upon the consideration of this court:

1st. That no particular or definite amount of debt was found to be due by the circuit court. That the law of Missouri requires that this should be done. That a solicitor could not waive this established right; that a decree in this respect is unusual and not according to the law as expounded by this Court.

2d. No day for redemption by paying the amount of the debt was fixed, hence the debtor had no opportunity to pay said debt. This was unusual and contrary to law; the debtor had a right to expect its solicitor to consent to ordinary legal documents and not to unusual illegal ones.

3d. Until the decree in the case was affirmed by this Court, no such case, in the opinion of the undersigned, was to be found in any report, either in England or the United States, where the attorney

was allowed by a court to buy the property of his client, adverse to the interest of his client.

Reference is made to our brief on that subject, page 23, and to the brief of M. W. Tyler *et al.*, page 68.

4th. In this case if the creditor gets his debt with interest, the debtor should have its property returned. This is the justice
192 of the case; otherwise the creditor not only gets the amount of his debt, but $7,200,000 in addition of property belonging to the debtor.

If he gets his debt paid with interest, it is all that he can in good conscience ask or receive—to get more is contrary to justice and equity.

5th. No innocent parties can be injured by the Court granting the prayer of petition. The mortgaged premises were purchased by the creditor. Any changes of ownership, which have occurred, have all been since the appeal was taken. (See Cowdrey's brief, page 32.)

93 U. S. Rep., 154. O'Harr *vs.* McConnell.

6th. The practice and custom of this Court has always been to issue such mandate "*as the justice of the case requires.*" It would be manifestly unjust to drive the appellant to another action in the circuit court, causing it a litigation of five to seven years, for it would take that time to again reach the ear of this Court before it could obtain justice. The power conferred upon this Court by section 701, was designed to enable this Court to do what the justice of the case requires, without driving the parties to circuitous actions; it was designed to shorten litigation. The people, by this statute, have reposed a trust in this Court that it will do so, if this Court can consistently do justice or even partial justice now; the appellant prefers to pay the alleged debt, although it never received one dollar of consideration therefor, and to get back its property, valued at over $7,000,000, to letting it remain in the hands of its opponents for the five or seven years, which it would take to get redress for its wrongs.

12 Peters, 219. Levy *vs.* Arredendo.
6 Crach, 266. Sheeky *vs.* Mandeville.
9 How., 550. Baldwin *vs.* Ely.
7 Wall., 107. Durant *vs.* Essex Co.
2 Wall., 524. Railroad *vs.* Scutter.
12 Wall., 430. Insurance Co. *vs.* Boykin.
16 Wall., 378–390. Insurance Co. *vs.* Piaggo.

April 5th, 1880.

N. A. COWDREY,
Solicitor.

193 In the Supreme Court of the United States. No. 242. October Term, 1879.

THE PACIFIC RAILROAD, Appellant,
vs.
GEORGE E. KETCHUM, CORNELIUS K. GARRISON, James Seligman, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, Trustees, James Baker, The Missouri Pacific Railway Co., and The National Trust Co. of New York, Respondents.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

Jay Gould and A. H. Calef, being duly sworn, each for himself, doth depose and say:

That the said Gould is the president and the said Calef the treasurer and assistant secretary of the Missouri Pacific Rail-
194 way Company; that the said company is a corporation duly organized under the general incorporation law of the State of Missouri, and was so organized by articles of incorporation, dated October 20, 1876, and duly filed with the secretary of State of Missouri, on October 21st, 1876; that on Oct. 25, 1876, (Record on Appeal, p. 64,) S. D. Thompson, the master in chancery, delivered the foreclosure deed to James Baker; that on the same day (Oct. 25, 1876) Baker and wife executed a quit-claim deed of the property to the said Missouri Pacific Railway Company, a copy of said Baker's deed is hereto attached, marked "A"; that the official records of said company show, and the fact is, that on Oct. 28, 1876, it received the full possession of said property, and has been in the possession, use, and operation of the same ever since.

Deponents further say that the said Missouri Pacific Railway Company has issued and sold 8,000 shares of stock, amounting to $800,000, which is now outstanding and owned by a large number of shareholders, and the greater amount is not in the hands or owned by the original holders.

Deponents further state that the said Missouri Pacific Railway Company executed its mortgage, dated November 1, 1876, to the National Trust Company of New York, as trustee, and known as the "third mortgage," (being the first executed by the said company, subject to two prior mortgages,) to secure negotiable bonds to the amount of $4,500,000, a copy of which, (except signatures, seal, and acknowledgment,) is herewith filed, marked "B." Deponents further state that the said mortgage was duly recorded November 20, 1876, and that on or prior to November 27, 1876, as shown by the official records of the said company, $4,000,000 of said bonds were executed and delivered to said trustee for the purposes in said mortgage mentioned, and deponents
195 state that $3,928,000 of bonds secured by the said mortgage have been issued, negotiated, and sold in good faith for value, and are now outstanding in the hands of many

holders, and have been and are a marketable security, and as such are constantly sold and dealt in from day to day. And nearly the whole amount of said bonds now outstanding were issued and delivered by the trustee before January, 1877.

Deponents further state that said Missouri Pacific Railway Company has made many valid contracts and incurred great liabilities on the faith of its having an irredeemable title to its property, and among other contracts has entered into contracts of lease with other railway companies, as follows:

It has leased the Osage Valley R. R. Co. (from Booneville to Tipton, Missouri, about 25 miles) for five years, from January 1, 1878, at a rental of $18,000 per year.

It has leased the St. Louis and Lexington R. R. Co. (from Lexington to Sedalia, about 55 miles) for ten years, from March 1, 1877, at a rental of $27,000 per annum.

It has leased the Missouri River R. R. (from State line to Leavenworth, about 25 miles) for 99 years, from Dec. 31, 1879, at $50,000 per annum.

It has leased the Leavenworth and N. W. R. R. (from Leavenworth to Atchison) for 99 years, from December 1, 1879, at $42,500 per annum.

It has leased the Holden Branch of the M. K. & T. R. R., from Holden to Paola, for ten years, from February 16, 1880, at $40,000 per annum.

It has leased a railroad from Atchison to St. Joseph, for 25 years, at an annual rental of $13,500.

It has leased the Kansas City & Eastern R. R., (43 miles long,) from Kansas City to Lexington, Mo.; also a road from Tipton to Versailles, 20 miles long, for 30 years, from July 1, 1880.

196 And Jay Gould, for himself, further states that on the 13th day of November, 1879, he purchased 4,005 shares of stock in the Missouri Pacific Railway Company of C. K. Garrison, paying him therefor at the time the full value thereof in cash; and the said Gould further states that he made the said purchase by himself and for himself, and for no other person, and was and is alone and solely interested therein, and that neither before or at the time of said purchase was he informed, or did he know, or had he ever heard, of this appeal, or of any litigation touching the said property, and this deponent made such purchase for value, and wholly without notice of any adverse rights or equities, if any exist, and deponent saith that if it should now be decided and held that the title of the present company is defective or redeemable, it would cause infinite confusion and great loss to the stockholders, the lessors, the mortgage creditors, and other creditors of the said Missouri Pacific Railway Company.

He further states that neither said old Pacific Railroad Co. of Mo., nor any one for it, has tendered or offered to pay to the trustee or to the present company, or to any person, the amount neces-

sary to redeem the said mortgage foreclosed, or any amount whatever.

JAY GOULD.
A. H. CALEF.

STATE OF NEW YORK, }
City of New York, } *ss:*

Subscribed and sworn to before me, this 7th day of April, 1880. Witness my hand and official seal, hereto set, the date above written.

JAMES J. THORNLEY, JR.,
Notary Public, Kings and New York Cos., N. Y.

197 Supreme Court of the United States. October Term, 1879.

PACIFIC RAILROAD, Appellants,
vs.
GEORGE E. KETCHUM *et al.*, Appellees. } No. 242.

Reply of Pacific Railroad to Affidavits of Jay Gould and A. H. Calef.

The Pacific Railroad, appellants in the above-entitled case, replies to the answer of the Missouri Pacific Railway Company, made to the motion of the Pacific Railroad for liberty to pay the mortgage debt and to redeem the premises mortgaged, and says:

1st. That said Missouri Pacific Railway Company received title to the mortgaged premises through James Baker, the attorney and solicitor of the appellant, well knowing him to be such, and that it paid to said Baker the sum of $20,000 to get said title.

198 That to the extent of $20,000 said Baker made gain out of interest hostile to that of his client.

2d. That the opinion of this Court on this appeal infers that the circuit court had no jurisdiction in this case until Fish and Vail filed their answer, which was on the 6th day of June, 1876, and, on the same day, the 6th of June, the decree of foreclosure was granted; in other words, the railroad of this appellant, whose interest therein is or was worth over $7,000,000, was foreclosed on the same day the court got jurisdiction of the case. All other proceedings in the case, seizing the property and appointing receivers therefor, were without jurisdiction.

The appellant thinks that this is a reason why it should be allowed to pay its creditor and receive back its property.

3d. In reply to the allegations of the Gould affidavit, relating to leased railroads, the appellant says: That most of the roads named are roads which this appellant had formerly leased, and that the Missouri Pacific Railway Company has merely modified or substituted new leases for old ones.

In other cases, like that of the Holden Branch, the lease must, of necessity, be a temporary lease, because the lessor company is in the hands of the United States circuit court, which has placed the mortgagees in possession, and it can only be leased while it so remains in the hands of said court, or in the hands of the mortgagee.

199 In another case, Tipton to Versailles, it is a mere extension of the St. Louis and Lexington Railroad, which is one of the old leased roads.

The appellant avers that in each and every case, where a lease or a contract has been made, it was made with the full knowledge of all parties to said lease and contracts of the pendence of this appeal in this Court.

4th. That it appears by the copy of the deed from Baker to the Missouri Pacific Railway Company, attached to Gould's affidavit, that the consideration of the deed of conveyance emanated wholly from the holders of the bonds foreclosed, (the third mortgage, old bonds,) and in whose behalf said Baker acted.

That said new mortgage bonds purporting to be secured by the mortgage, a copy of which is attached to the affidavit of Messrs. Gould and Calef, was issued entirely to the holders of the third mortgage bonds, to foreclose which this suit was brought; that the old mortgage was for $4,000,000. Messrs. Gould and Calef swear that but $3,928,000 of new bonds have been issued.

The fact that the new bonds were issued in lieu of the principal of the old ones, and the stock of the new company for the accrued interest upon the old bonds, appears on page 14 of "Affidavits and documents in support of motion to dismiss appeal," filed in this cause by the Missouri Pacific R. R. *et al.*, appellees.

200 In said affidavit so filed by said appellees it appears that new bonds will be issued for the old ones, and cash paid for the accrued interest upon the old bonds, and the same time the old bondholders *was* required to subscribe for a *pro rata* of the capital stock of the new corporation and pay cash therefor; that is to say, he received cash for his arrears of interest, and paid the same cash for capital stock of the Missouri Pacific Railway Company; or, in other words, his old bonds were put into new bonds for the principal thereof, and the arrears of interest on the bonds into capital stock of the successor company, which is one of the appellees in this case. Of this new capital stock, Garrison, one of the appellees, received $405,000 at the par or nominal value thereof, which is the exact amount Mr. Gould swears he bought from said Garrison.

The Pacific Railroad avers that if Mr. Gould did not know that Garrison was a party defendant to this appeal at the time he bought his stock, it was his duty to know, and, had he taken the ordinary precaution that a prudent man takes in buying a piece of real estate, that is, get a lawyer to examine the title, he would not now be in the position of pleading ignorance in this Court.

The appellant respectfully refers this court to its own decisions in this respect, as recorded in—

7 Howard, 185—Erruson *vs.* Lowery.

93 United States, 154—O'Hara *vs.* McConnell.

And to—

9 Bush, Ky., 468—C. & L. R. R. *vs.* Bowler.

201 The appellant is willing and desirous of paying the debt due secured by the mortgage being foreclosed, and it promises to do so whenever and as soon as the Court finds the amount due, and orders the payment thereof.

PACIFIC RAILROAD,
By R. L. CUTTING, JR.,
President.
N. A. COWDREY,
Solicitor.

CITY AND STATE OF NEW YORK, *ss:*

R. L. Cutting, Jr., being sworn, says that he is the president of the appellant company; that he has read the foregoing reply; that the same, and the matters therein contained, are true according to his best knowledge and belief.

R. L. CUTTING, JR.

APRIL 12TH, 1880.

Sworn to before me, the day and year above named.
[SEAL.]
W. D. SEARLS,
Notary Public, N. Y. Co.

202 Supreme Court of the United States. No. 242. October Term 1879.

S. T. Glover.
J. R. Shepley.
N. A. Cowdrey.
M. W. Tyler.
M. H. Carpenter.
} THE PACIFIC RAILROAD OF MISSOURI, Appellant,

vs.

M. C. Day.
G. F. Edmunds.
J. O. Broadhead.
} GEORGE E. KETCHUM, C. K. GARRISON *et al.*

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

1877, Oct. 8. Record received and filed.
15. Petition for rule to show cause, &c., filed.
15. Petition submitted.
29. Petition denied.
1879, Dec. 1. Motion to advance and argue with No. 162 filed.
15. Reply of Cowdrey to objections to motion to advance filed.
15. Motion submitted.
22. Ordered to be advanced to be argued after No. 162.
1880, Jan. 2. Motion to dismiss and notice filed.
14. Exhibits Nos. 1, 2, 3 and 5, affidavits, extracts from minutes of board, and transcript from sup. ct. of N. Y. filed.

1880, Jan. 14. Affidavit of Missouri Pacific Railroad Co. filed.
14. Supplemental affidavit and exhibit filed.
14. Proof of notice filed.
21. Affidavit of N. A. Cowdrey *et al.*, in opposition to motion, filed.

203 1880, Jan. 26. Motion postponed to hearing on merits.
27. Additional time granted.

1880, Jan. 27. Argument commenced.
28. Argument concluded.
Mar. 22. Decree to be affirmed with costs.
Apr. 5. Motion to reverse decree appealed from, and to remand cause, &c., filed by leave. Also, notice and service filed.
10. Affidavit of Gould and Calef, and exhibits filed in opposition to motion.
12. Motion postponed to 19th instant. (See order as to filing additional papers.)
13. Reply of appellant to affidavits of Gould and Calef filed.
19. Motion submitted.
May 10. Motion denied.

204 Supreme Court of the United States. No. 825. October Term, 1877.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

Mr. N. A. Cowdrey, of counsel for the appellant, filed and submitted to the consideration of the Court petition for a rule on the Missouri Pacific Railway Company, requiring them to show cause, if any they have, why a receiver should not be appointed in this cause.

15th October, 1877.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

On consideration of the motion of Mr. N. A. Cowdrey, for a rule on The Missouri Pacific Railroad, requiring it to show cause,
205 if any it has, why a receiver should not be appointed, and of the argument thereupon had in support of said motion, it is now here ordered by the Court that said motion be, and the same is hereby, denied.

29th October, 1877.

October Term, 1879.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.* } No. 242.

Mr. N. A. Cowdrey filed and submitted to the consideration of the Court motion to advance this cause for argument with No. 162.
15th December, 1879.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

206 On consideration of the motion to advance this cause for argument with No. 162, it is ordered that said motion be, and the same is hereby, granted, and that the cause be assigned for argument immediately after the argument of No. 162.
22d December, 1879.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

Mr. J. O. Broadhead called up the motion to dismiss this appeal, whereupon it is ordered that said motion be, and the same is hereby, postponed until the argument on the merits.
26th January, 1880.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

207 On motion of Mr. N. A. Cowdrey, it is ordered that one hour additional time be granted each side in the argument of this cause. And on motion of Mr. George F. Edmunds, it is ordered that three counsel be allowed to argue for the appellees.
27th January, 1880.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

The argument of this cause was commenced by Mr. N. A. Cowdrey, of counsel for the appellant, and continued by Mr. M. C. Day, Mr. G. F. Edmunds, and Mr. James O. Broadhead, of counsel for the appellees.
27th January, 1880.

208 THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

The argument of this cause was continued by Mr. J. O. Broad-

head, of counsel for the appellees, and concluded by Mr. Matt. H. Carpenter, for the appellants.

28th January, 1880.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM, CORNELIUS K. GARRISON, JAMES SELIGMAN, Thomas W. Pierce, The Atlantic and Pacific Railroad Company, Henry F. Vail and James D. Fish, trustees, James Baker, The Missouri Pacific Railway Company, and The National Trust Company of New York.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

209 This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Missouri, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

22d March, 1880.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

On motion of Mr. N. A. Cowdrey leave is hereby granted him to file petition in this cause, and on motion of Mr. George F. Edmunds, it is ordered that the hearing of said petition be postponed until Monday next.

5th April, 1880.

210 THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

On motion of Mr. J. W. Cary, in behalf of Mr. N. A. Cowdrey, it is ordered that the argument of the petition filed in this cause be postponed until Monday, the 19th instant; and that copies of any additional affidavits be served upon counsel in the city of New York by the 15th instant.

12th April, 1880.

THE PACIFIC RAILROAD OF MISSOURI, Appellant,
vs.
GEORGE E. KETCHUM *et al.*

The petition of reversal of this cause on certain points was submitted to the consideration of the Court on printed arguments by Mr. N. A. Cowdrey, in support of said petition, and by Mr. George F. Edmunds, in opposition thereto.

19th April, 1880.

211 Supreme Court of the United States. No. 9, Original. October Term, 1876.

Ex parte ROBERT L. CUTTING, Jr., and others, Petitioners.

In the Matter of GEORGE E. KETCHUM *et al.*, Complainants,

vs.

THE PACIFIC RAILROAD *et al.*

Petition for Rule to show Cause why Mandamus should not issue requiring the Judges of the U. S. Circuit Court for the Eastern District of Missouri to dismiss said Cause for want of Jurisdiction, or to allow an appeal to Supreme Court of United States.

212 *Motion for Rule to show Cause why Mandamus should not Issue.*
Filed October 27th, 1876.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, N. A. Cowdrey, Robert L. Cutting, Jr., and others, pray leave to file petition and transcript of record in case of George E. Ketchum and others against the Missouri Pacific Railroad Co. and others, originally instituted in the circuit court of the United States for the eastern district of Missouri, and thereupon pray the Court to grant a rule upon the judges of said circuit court to show cause why a mandamus should not issue to grant an appeal as therein prayed.

HENRY CRAWFORD, *Solicitor.*

Endorsed: Sup. Court U. S.; 1876, Octr. Term, No. 9; Original. *Ex parte* in the matter of Robert L. Cutting, Jr., Peter Marie, Frank A. Otis, Jacob Cromwell, George L. Kingsland, George R. Fearing, and N. A. Cowdrey, Petitioners. Motion for alternative writ of mandamus. Filed 27th October, 1876.

Supreme Court of the United States. October Term, 1876.

GEORGE E. KETCHUM and others
agst.
THE PACIFIC RAILWAY COMPANY and others. } In Chancery.

Pending in the Circuit Court of the United States for the Eastern District of Missouri.

To the Honorable Judges of the Supreme Court of the United States:

213 Your petitioners, Robert L. Cutting, Jr., Peter Marie, Frank A. Otis, Jacob Cromwell, George L. Kingsland, George R. Fearing, and Nathaniel A. Cowdrey, respectfully show that on the 11th day of November, A. D. 1875, one George E. Ketchum, a citizen of the State of New York, filed a certain bill of foreclosure in the said circuit court of the United States for the eastern district of Missouri against the Pacific Railroad and others,

citizens of the State of Missouri, and Henry F. Vail, James D. Fish, Edwin D. Morgan, and others, citizens of the State of New York, praying for a foreclosure of said line of railroad and the sale thereof, under a certain mortgage executed to said Vail and Fish, as trustees, on July 10th, 1875, by the said Pacific Railroad Company.

That such proceedings were thereafter had in said cause, that an answer was filed in the name of said railroad company by its solicitor, James Baker, admitting all the allegations of said bill, and that the said corporation was liable to pay the full principal and interest of the said $4,000,000 bonds purporting to be secured by said mortgage sought to be foreclosed.

And such other proceedings were had that, on February 7, 1876, Thomas P. Akers, by leave of court, was made defendant as a stockholder, and he thereupon filed his answer and cross-bill in behalf of himself and all other stockholders, denying the validity of said bonds and mortgage, and claiming that they were held fraudulently as against said Pacific Railroad, in which he was a stockholder, and praying a cancellation thereof.

And such further proceedings were afterwards had that the petitioners filed their petition making themselves parties and joining in the answer and cross-bill of said Akers, and thereafter, at an adjourned term of said circuit court, on the 6th day of June, 1876, a decree of foreclosure, in manner and form as shown by the record, was entered in said cause and allowed by a special judge from another district.

And thereafter, on September 6th, 1876, the said mortgaged property was offered for sale and bid off by said James Baker, the solicitor of said Pacific Railroad, and on September 19th, 1876, and on 22d of same year, your petitioners filed objections to said decree and sale, and prayed that the said decree might be vacated, and that said sale might not be confirmed.

214 And the court denied said motion of petitioners, and refused to grant an appeal to the Supreme Court of the United States, and did and do deny that your petitioners have any standing whatever in said court in said cause, and refuse to entertain any motions or petitions made by your petitioners in said cause, whether for appeal or any other relief.

And, notwithstanding the objections of your petitioners, the said circuit court decreed and entered an order fully confirming said sale to said Baker, and after notice was duly served upon him and upon the said complainants that your petitioners would apply to this Court to compel the allowance of an appeal, the said Baker and the complainants made application to the said circuit court to enter orders in said cause directing the master in chancery to execute a conveyance of all the property of said corporation to said Baker, and that the receivers of said court might be directed to place said Baker in possession under the said conveyance. And your petitioners are aggrieved by the orders and decrees of said circuit court ordering a sale of said property, and also the one confirming the

sale to James Baker, and desire to take an appeal therefrom and to each of them to the Supreme Court of the United States, but which right of appeal is wholly refused and denied them by the said circuit court.

Petitioners show that they are the owners, either in their own right or in trust for others, of a large amount of the capital stock of the said Pacific Railroad, to the amount of over $3,000,000, at its par or face value, and that the amount in controversy in this action largely exceeds the said sum of $3,000,000.

Petitioners make part of this application a transcript of the record in said cause, and specially aver that the matters and things set forth in their original petition and said petitions of September 19th and 22d are true.

In consideration whereof, petitioners pray that leave may be given to file this petition and transcript, and that a rule be granted, returnable at a short day, commanding the said judges of the circuit court of the United States for the eastern district of Missouri to show cause, if any they can, why a writ of mandamus should
215 not issue from this Court commanding them, or one of them, to grant your petitioners an appeal to this Court from the said decrees of that court in said cause, and to accept bond to act as a supersedeas, and that such appeal be allowed as of the date when said application was made originally in said court, or when it was rejected, as this Court shall order.

Or that this Court will grant such other, further, or different relief as to equity appertains.

Oct. 27th, 1876.

ROBERT A. CUTTING, JR.,
PETER MARIE,
GEORGE R. FEARING,
FRED. A. OTIS,
JACOB CROMWELL,
N. A. COWDREY,
By H. CRAWFORD,
Solicitor.

WASHINGTON, D. C., *October 27th*, 1876.

Personally appeared N. A. Cowdrey, and made oath that he is one of the foregoing petitioners; that the allegations therein contained are true, to his best knowledge and belief.

N. A. COWDREY.

Sworn to before me, the day and year above named.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

HENRY CRAWFORD,
Solicitor.

Endorsed: Supreme Court U. S., 1876, October Term, No. 9, original. *Ex parte:* In the matter of Robert L. Cutting, Jr., Peter

Marie, Frank A. Otis, Jacob Cromwell, George L. Kingsland, George R. Fearing, and N. A. Cowdrey, petitioners. Petition for mandamus. Filed 27th October, 1876.

216 In the Supreme Court of the United States. No. 9, Original. October Term, 1876.

Ex parte ROBERT L. CUTTING, JR., PETER MARIE, FRANK A. OTIS, Jacob Cromwell, George L. Kingsland, George R. Fearing, and N. A. Cowdrey, Petitioners.

In the matter of GEORGE E. KETCHUM *et al.*, Complainants, *vs.* THE PACIFIC RAILROAD *et al.* } Petition for Mandamus.

Now, on the 27th day of October, A. D. 1876, on the application of H. Crawford, counsel for the petitioners, for a rule on the judges of the circuit court of the United States for the eastern district of Missouri, to show cause, if any they have, why a writ of mandamus should not issue commanding them to grant the prayer of said petitioners for an appeal in said cause: it is ordered that their petition be placed on file, together with the transcript of record accompanying the same, and a rule is directed to go, returnable on the 20th day of November, A. D. 1876, to the said judges of the circuit court of the United States for the eastern district of Missouri, commanding them to show cause, if any they have, why a writ of mandamus shall not issue, as prayed in said petition.

27th October, 1876.

Attest: D. W. MIDDLETON,
Clerk Supreme Court of the United States.

217 Supreme Court of United States. October Term, 1876.

Ex parte ROBERT S. CUTTING, JR., PETER Marie, Frank A. Otis, Jacob Cromwell, George L. Kingsland, George R. Fearing, and N. A. Cowdrey, Petitioners. } No. 9. Original.

In the matter of GEORGE E. KETCHUM *et al.*, Complainants, *vs.* THE PACIFIC RAILROAD CO. *et al.* } Petition for Mandamus.

Now, on the 27th day of October, A. D. 1876, on the application of H. Crawford, counsel for the petitioners, for a rule on the judges of the circuit court of the United States for the eastern district of Missouri, to show cause, if any they have, why a writ of mandamus should not issue commanding them to grant the prayer of said petitioners for an appeal in said cause, it is ordered that their petition be placed on file, together with the transcript of record accompanying the same, and a rule is directed to go, returnable on 20th day

of November, A. D. 1876, to the judges of the circuit court of the United States for the eastern district of Missouri, commanding them to show cause, if any they have, why a writ of mandamus shall not issue as prayed in said petition.

Answer and Return.

The respondents, John F. Dillon and Samuel Treat, judges of the circuit court of the United States for the eastern district of Missouri, for answer and return to the foregoing order to show cause, if any they have, why a writ of mandamus, as prayed for, should not issue, respectfully state, and for cause show the following facts, to wit:

The circuit court of the United States for the eastern district of Missouri, having before it at its March term, 1876, for consideration the various matters in the suit of Ketchum *et al. vs.* The Pacific Railroad Company *et al.*, postponed the consideration thereof to the adjourned term, ordered to be held on the 5th day of June following.

On the 6th day of June of said adjourned term, by consent of all the parties thereto remaining of record in said cause, a decree of foreclosure and order of sale were entered.

The petitioners before the Supreme Court of the United States were then no parties in said cause. Said adjourned session of said March term was open, and in active discharge of business pending before it, until the 24th day of June, at which time it adjourned *sine die*.

The original bill of foreclosure was filed November 11th, 1875, by said George E. Ketchum, on his own behalf, and on behalf of all others holding third-mortgage bonds against the Pacific Railroad, a corporation created under and by virtue of the laws of the State of Missouri, and against the Atlantic and Pacific Railroad Company, a corporation created and organized under and by virtue of an act of the Congress of the United States approved July 27th, 1866, and at the several times thereinafter mentioned engaged in operating and maintaining a railroad in the State of Missouri, and against James Baker, Rufus J. Lackland, and Dwight Durkee, citizens of the State of Missouri, and Jesse Seligman, Henry F. Vail,
218 James D. Fish, Edwin D. Morgan, Joseph Seligman, Uriel A. Murdock, James Punnett, and Luther C. Clark, citizens of the State of New York.

On January 8th, 1876, T. P. Akers, purporting to be a stockholder of said Pacific Railroad, filed his motion for leave to answer, and on February 7th, by leave, filed his answer and cross-bill.

On March 10th, said Akers filed a motion to withdraw his said answer and cross-bill, which, on April 3d of said year, was granted. On said 3d day of April leave was given to said St. Louis county to file a separate answer, and to said Akers to file a new cross-bill, and for said county to join in said cross-bill.

On April 25th, said Akers filed his answer and cross-bill, and also said St. Louis county.

On June 5th, said Durkee and Lackland, Murdock, Clark, Morgan, Joseph Seligman, Baker, and Jesse Seligman, also the Atlantic & Pacific Railroad Company, filed their answers.

On June 6th, 1876, Fish and Vail answered, and on the same day said Akers and said St. Louis county withdrew their answers and dismissed their cross-bills; both said Akers and said St. Louis county purporting to act for themselves as stockholders and for all other stockholders who might join with them.

Thereupon all parties of record, being duly represented in court, consented to the decree of foreclosure and sale of the date June 6th, 1876.

On September 18th, to wit, the first day of the regular September term of said circuit court, a motion was filed to confirm the sale previously made by the master under the decree of June 6th, 1876, a report of which had been filed on September 15th preceding.

On September 19th, said petitioners before the Supreme Court of the United States filed in the said circuit court a motion for leave to intervene, as also did Mary R. Miltenberger, claiming to be stockholder of said Pacific Railroad.

On September 22d, said petitioners filed an additional motion to intervene.

On the third day of October, said several motions to intervene were denied on two grounds, to wit:

First. That the decree of June 6th, 1876, was a final decree, and, having been rendered at a prior term of the court, it was beyond the power of the same court to set it aside or change or modify it.

Second. Were this otherwise, the petitioners were guilty of laches, which should deprive them at that late day of any supposed right to intervene in order to contest the original merits of the plaintiffs' right for a foreclosure as decreed at the preceding term.

This was the more apparent from the fact that Cowdrey, one of the petitioners, also T. P. Akers and Vogel, for themselves and such stockholders as might join, had on the 13th day of November, 1875, filed in said circuit court an original bill to invalidate the mortgage sought to be foreclosed in said suit by said Ketchum *et al.*

After appearance to said bill of Cowdrey and others, and before answers thereto, the same was dismissed as to said Akers and Vogel on December 11th, 1875, on their motion.

On January 7th, 1876, said Cowdrey filed an amended bill, to which answers were filed by some of the defendants on February 5th, 1876.

On February 7th, 1876, a second amended bill was filed by said Cowdrey. To said second amended bill answers were filed by some of the defendants and demurrers by other defendants, on February 7th, March 11th, March 20th, and, by leave, on September 13th.

No motions or other procedings were ever had on said bill
219 of Cowdrey, nor any matters therein set down for hearing, or testimony taken.

It was thus apparent to said circuit court that said Cowdrey, for himself and other stockholders who might have joined in said bill, had taken no proper steps to advance the same for hearing, or for the consideration of any matters therein involved, with the required diligence.

It also appears that said Akers and St. Louis County, in said bill of Ketchum *et al v.* The Pacific Railroad *et al.*, had, on behalf of themselves and such other stockholders as might join therein, answered, and filed cross-bills for the same purpose as said Cowdrey had filed his original and amended bills.

This said Cowdrey, and all other stockholders who might join with him, were in court during all the proceedings of the term, when the decree of foreclosure and sale was entered, and had had the fullest opportunity to intervene by joining in the answers and cross-bills filed by said Akers and said St. Louis County, and otherwise.

Still, neither he nor any one of the petitioners herein objected to or in any manner interposed against the said consent-decree of June 6th, 1876.

The first motions made by them with reference thereto were at the following term of the said circuit court, as heretofore stated, to wit, on September 19th, for leave to intervene and become parties to said original suit of Ketchum *et al.* All of the said facts are, as your respondents are informed and verily believe, wholly apparent from the transcript of the record of the said circuit court now on file in said Supreme Court.

And your respondents, for further answer and return, state that thereafter, on the 21st day of October, 1876, a bill of review was filed in said circuit court as follows, to wit:

Circuit Court of the United States, in and for the Eighth Judicial Circuit and Eastern District of Missouri.

To the honorable the judges of the circuit court of the United States for the eighth judicial circuit and eastern district of Missouri:

Alexander Reitlinger, of the city of New York, and a citizen of the State of New York, suing on behalf of himself and all others in like interest in the Pacific Railroad Company, who may hereafter come in and contribute to the expenses of this action, brings this his bill against Cornelius K. Garrison, George E. Ketchum, James Seligman, Jesse Seligman, Edwin D. Morgan, Henry F. Vail, Joseph Seligman, James D. Fish, Uriel A. Murdock, and Luther C. Clark, residents of the city of New York, and citizens of the State of New York, and against the Pacific Railroad Company, a body politic and corporate, incorporated in the State of Missouri, under and by virtue of an act of the legislature of said State, approved

—— 1848, and a citizen of the State of Missouri, and against the Atlantic and Pacific Railroad Company, a body politic and corporate, created by an act of the Congress of the United States, approved July 27th, 1866, and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," and by the aforesaid act of Congress authorized and empowered to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and against James Baker, Rufus J. Lackland, Dwight Durkee, and Thomas P. Akers, residents of the city of St. Louis, and citizens of the State of
220 Missouri, and Thomas W. Pierce, of Boston, and a citizen of the State of Massachusetts, and against the county of St. Louis, a body politic and corporate, incorporated under and by virtue of the laws of the State of Missouri, and a citizen of the State of Missouri.

And thereupon your orator complains and says, that on or about the 3d day of November, 1875, George E. Ketchum, the defendant above named, exhibited his bill of complaint in this honorable court against the Pacific Railroad Company, Jesse Seligman, Uriel A. Murdock, Luther C. Clark, Henry F. Vail, James D. Fish, Rufus J. Lackland, Dwight Durkee, and James Baker, all defendants above named, and in and by said bill the said George E. Ketchum set forth as follows:

(And said bill of review then recited in full the said original bill of Ketchum *et al.*, as the same appears in the transcript of record on file in this cause in the said Supreme Court.)

And the said bill of review, after the recital of said bill of Ketchum *et al.*, was in words and figures as follows, to wit:

That in and by certain orders made in said cause and certain amendments made to the said bill, copies of which are hereto annexed as exhibits forming a part of this bill, and as appears by the decree in said cause hereinafter set forth, the said Cornelius K. Garrison, James Seligman, and Thomas W. Pierce became co-complainants in said suit, and the aforesaid Thomas P. Akers and the county of St. Louis became co-defendants in said suit, as appears by certain orders and amendments made in said suit, by their answers and cross-bills therein, all of which are hereto annexed as exhibits, complainant prays may be taken as a part of this bill.

That the aforesaid defendants, Pacific Railroad Company, James D. Fish, Henry F. Vail, James Baker, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Uriel A. Murdock, appeared and put in such answers to the aforesaid bill as admitted the allegations of the said bill, but neither they nor any of them set up any plea, demurrer, or any other traverse, or any other contestation whatever to or concerning the said bill. The defendants, Thomas P. Akers and the county of St. Louis, set up certain answers and cross-bills to the said bill, but the said answers were thereafter withdrawn and the said cross-bills dismissed by the said Thomas P. Akers and the

county of St. Louis. Copies of the aforesaid answers and cross-bills set up by all of the defendants in the said bill are hereto annexed as exhibits, and your orator prays that the same may be taken as a part of this bill, with the same force and effect as if the same were fully and at length set out in the body of this bill.

That thereafter, and upon the above-recited bill, and upon the answers above referred to, except the answers and cross-bills of Thomas P. Akers and of the county of St. Louis, which were withdrawn, and upon the exhibits in the above-described suit, the said cause came on to be heard before your honors, and no opposition being made by any of the aforesaid parties to the proceedings hereinbefore set forth, a decree therein was pronounced, passed, entered, and enrolled on the 6th day of June, 1876.

The said decree reads as follows:

(The said bill of review then recited in full the said original decree in said case of George E. Ketchum *et al. vs.* Pacific Railroad *et al.*, as the same now appears in the transcript of record on file in this cause in the said Supreme Court.)

221 And the said bill of review, after the recital of said decree, was in words and figures as follows, to wit:

And thereupon your orator further shows that the aforesaid decree is erroneous and ought to be reversed and set aside, for many apparent errors and imperfections, as hereinafter set forth.

Your orator is the owner of five hundred shares of the capital stock of the Pacific Railroad Company above named, one of the defendants in the aforesaid suit, in which the above-recited decree was obtained, and the said Pacific Railroad Company is the mortgagor named in the mortgage on which said decree was obtained. The complainant in this suit is a member of the said corporation, and his shares aforesaid stand in his name on the books of the said Pacific Railroad Company.

Your orator acquired said shares for investment on October 18th, 1875, and paid therefor at the rate of thirty-seven and one half dollars per share, and the sum of ($18,750) eighteen thousand seven hundred and fifty dollars for the total amount of said shares. By reason of the said decree of foreclosure and sale, your orator's interests in the said Pacific Railroad Company have been greatly injured, and unless the said decree be set aside and reversed, your orator's property and interest, as a member of the said corporation, and an owner in the said shares therein, and interested in the railroad and property thereof, will be totally destroyed. Your orator is in fact greatly aggrieved by the said decree, and the directors of the Pacific Railroad Company have utterly failed and refused to take any proceedings to have the said decree reviewed, reversed, or set aside, though they have thereunto been duly requested. The defendant Baker attempted to purchase said railroad and property at the aforesaid sale.

And your orator avers and says that the aforesaid decree contains apparent error and imperfections, inasmuch as it appears by

the bill of complaint in the said suit in which the said decree was obtained, as follows:

That the complainant in said bill, George E. Ketchum, is named in and by said bill, as well as certain of the co-complainants in said bill, to be and as citizens of the State of New York, and certain of the defendants in said bill, Jesse Seligman, Edwin D. Morgan, Joseph Seligman, Henry F. Vail, and James D. Fish, are likewise named in said bill to be and as citizens of the State of New York. The said Henry F. Vail and James D. Fish are made defendants in said bill, as trustees of the mortgage under which the complainants claim title, and pray foreclosure.

This court never had any jurisdiction, right, or lawful power in said suit to proceed therein upon or over the property of the Pacific Railroad Company, and this court never had any authority or warrant of law for granting any order or decree in the suit aforesaid, but the said bill ought have been dismissed for the reasons aforesaid.

That your orator is totally remediless to enforce the said claims at law and without the intervention and process of a court of equity.

In consideration whereof, and inasmuch as such errors and imperfections, namely, the absence of jurisdiction in the court, appear n the body of said decree, and in the bill on which the same is founded, the complainant hopes that the said decree will be reversed and set aside, and no further proceedings had therein.

To the end, therefore, that your orator and the other parties in like interest in the Pacific Railway Company may be relieved from the said erroneous and unlawful decree, whereby it is sought
222 to deprive them of their rights and property in and to the said railroad, and that for the reasons and under the circumstances aforesaid, the said decree may be reviewed, reversed, and set aside, and no further proceedings taken therein, and the said railroad and all the property of the said Pacific Railroad Company and the said corporation be relieved from the decree in the said suit and all the proceedings therein.

May it please your honors to grant your orators process of subpœna against Cornelius K. Garrison, George E. Ketchum, James Seligman, Thomas W. Pierce, Pacific Railroad Company, Atlantic & Pacific Railroad Company, Rufus J. Lackland, Dwight Durkee, Jesse Seligman, Edwin D. Morgan, Uriel A. Murdock, Joseph Seligman, Luther C. Clark, Henry F. Vail, James D. Fish, Thomas P. Akers, county of St. Louis, commanding all and each of them to appear and answer this your orator's bill.

And to such of the defendants who may be out of the jurisdiction of the court, your orator prays that process may be issued to make them parties and compel them to appear and answer this bill if they come within such jurisdiction, or that if they should not come within such jurisdiction, such proceedings may be had in regard to such defendants as may be according to the forms of pro-

ceedings in equity and that of the statute in such cases made and provided.

And your orator prays your honors to make such interlocutory and final orders and orders of injunctions and decrees as may be requisite to prevent any further action or proceedings under the said unlawful and erroneous decree which may be injurious or adverse to the rights and interests of your orator, and the other parties in like interest in the said Pacific Railroad Company.

And your orator likewise prays that the aforesaid decree and all proceedings thereon may be reviewed and reversed, and the bill in said suit wherein said decree was obtained be dismissed and all proceedings be set aside and held for naught.

And on the final hearing and *pendente lite*, may it please your honors to grant your orator such other and further relief as may be equitable in the premises.

And your orators will ever pray, &c., &c.

ALEXANDER REITLINGER.

EDWARD L. ANDREWS,
Solicitor and of Counsel for Complainant.
With HENDERSON & SHIELDS,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Southern District of New York:

Alexander Reitlinger, being duly , deposes and says that he is the complainant named in the above bill, and a stockholder of the Pacific Railroad Company as therein alleged; that he has read the foregoing bill and knows the contents thereof; that the said bill is true of his own knowledge, except as to the matters therein stated on information and belief, and as to said matters he believes them to be true.

ALEXANDER REITLINGER.

Sworn to before me, this 17th day of October, 1876.

MATTHEW DALY,
Notary Public, State, City and County of New York,
Acting as United States Commissioner.

223 Humbly suggesting, that if said transcript doth not set out all the facts and circumstances named, or such as may be necessary for a full investigation of the questions in this case, pending before said Supreme Court, the respondents are at all times ready and willing to make a further and more detailed return of the records of said circuit court. They respectfully submit, that for the causes stated the writ of mandamus prayed for ought not to issue, because—

First. It was not within the power of the said circuit court, or the judges thereof, at the term subsequent to that in which the final decree was rendered, to set the same aside, modify, or in any man-

ner change the same at the instance of the original parties to the suit, and far less at the instance of persons who were not parties, and who had not availed themselves of ample opportunities to become parties if they so desired.

Second. If said circuit court had power in the exercise of its legal discretion to permit at the dates named the petitioners to become parties in the said suit of Ketchum *et al.*, it ought not to have so done under the facts and circumstances stated, said petitioners not having appeared in due time, or offered, by way of indemnity or otherwise, to make good the costs and expenses which had been previously incurred or which might follow from their intervention provided they should fail in causing said decree of June 6th, 1876, to be set aside, and the proceedings had thereunder, and the third mortgage and the bonds secured thereby in the hands of the then holders to be decreed to be void.

Your respondents, therefore, respectfully submit, that as said petitioners were not parties in said suit of Ketchum *et al.*, and ought not in law or justice to have been permitted to intervene therein, under the circumstances named, the writ of mandamus prayed for ought to be denied.

All of which is respectfully submitted for the judgment of the Supreme Court of the United States in the premises.

(Signed) JOHN F. DILLON,
" SAMUEL TREAT,
Judges of the Circuit Court of the United States for the Eastern District of Missouri.

Filed 20th November, 1876.